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**Clerk of Circuit Court**  
**Outagamie County**  
**2013CF001074**

1      STATE OF WISCONSIN                      CIRCUIT COURT                      OUTAGAMIE COUNTY

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2      **STATE OF WISCONSIN,**

3                                      Plaintiff,

4      v.

**Case No. 13-CF-1074**

5      **CHONG LENG LEE,**

6                                      Defendant.

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7                                      **JURY TRIAL - DAY FOUR**

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9      BEFORE:                      **HONORABLE GREGORY B. GILL, JR.**  
10                                      Circuit Court Judge, Branch IV  
11                                      Outagamie County Justice Center  
                                    Appleton, WI 54911

12      DATE:                      **February 29, 2016**

14      APPEARANCES:              **CARRIE SCHNEIDER**  
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                                    Appearing on behalf of the State

16                                      **ANDREW MAIER and ALEXANDER DUROS**  
17                                      Assistant District Attorneys  
                                    Appearing on behalf of the State

18                                      **DEBORAH VISHNY and EVAN WEITZ**  
19                                      Attorneys at Law  
                                    Appearing on behalf of the Defendant

20                                      **CHONG LENG LEE**  
21                                      Defendant  
                                    Appearing in person

22

23

24      Joan Biese  
25      Official Reporter, Branch IV  
            Outagamie County

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## TRANSCRIPT OF PROCEEDINGS

THE COURT: Okay. We're on the record in *State of Wisconsin v. Chong Lee*.

Mr. Lee appears in person, along with his  
counsel, Attorney Evan Weitz and Deja Vishny.

I should also note that also present at counsel table is Mr. Solomon Gatton. Mr. Gatton is appearing under the student practice rule. Mr. Gatton, I understand you may be questioning a witness today?

MR. GATTON: I will.

THE COURT: And appearing on behalf of the State, Outagamie County District Attorney Carrie Schneider. Also seated at counsel table is Assistant District Attorney Andrew Maier, and while not present currently, Mr. Duros, Alex Duros, also appears on behalf of the State.

We did have an opportunity to meet this morning. We discussed some items of potential evidentiary issues with respect to call numbered Priority No. 4. There was a discussion about a potential hearsay issue. The court concluded it was not offered for the matter of the truth and so that portion will be allowed.

There was also, I believe it was an issue related to item number or Page No. 5 of that same

1 call log. The court -- I'm sorry. On Call 4 the  
2 court concluded that the prejudice did not outweigh  
3 the potential impact. The court will allow.  
4 Additionally the court did clarify its order as it  
5 relates to what I'll call the Hereford issue, and  
6 that issue was further clarified for counsel.  
7 Counsel will be expected to, if there are summaries  
8 or items that are inconsistent with what police  
9 investigations had said, the court will order those  
10 be --

11 ATTORNEY VISHNY: And if I examine the  
12 witness about it.

13 THE COURT: And if that -- if you examine.  
14 That's correct. Additionally, and the court at this  
15 time is going to address an issue that came to the  
16 court's attention just recently, if we could please  
17 swear in our interpreter.

18 (Clerk administers oath to interpreter.)

19 THE INTERPRETER: Yes.

20 THE CLERK: Please state your name for the  
21 record please.

22 THE WITNESS: Thao Lee, T-H-A-O, L-E-E.

23 THE COURT: Mr. Thao, I would ask that you  
24 go by Mrs. Lee again.

25 On Friday this court had issued an order

1 directing that Mrs. Lee not have any communications  
2 with any potential witnesses in this case, and in  
3 particular that she be directed to not have any  
4 communication related to the contents of this trial.  
5 Subsequently the court has learned that Mrs. Lee has  
6 had communications. And while the communications or  
7 the information the court has in and of itself does  
8 not lead me to believe that there was a direct  
9 violation, the communications raise enough of a  
10 concern that the court is going to expand on its  
11 order.

12 Accordingly, it is the order of the court, for  
13 purposes of preservation of the integrity and the  
14 process, that Mrs. Lee not be allowed in court for  
15 the testimony of Mr. Paul Lee, Mr. Teng Lee, Mr. Tong  
16 Lee, Mr. Tom Lee, Miss Lisa Stutzman, and Miss Bobby  
17 Jo Stutzman. If Mrs. Lee has any questions about the  
18 court's order, she may contact the public defender's  
19 office. I have apprised the public defender's office  
20 that said contact may be forthcoming. We will  
21 provide Mrs. Lee with a copy of that telephone  
22 number.

23 ATTORNEY SCHNEIDER: There is one other  
24 witness, Joe Thor. I would also ask for the same. I  
25 might not have mentioned that in the back.

1                   THE COURT: I believe Joe Thor may have  
2                   been mentioned. That may have been an oversight on  
3                   my part. That ruling will also pertain to Mr. Joe  
4                   Thor. And I'd ask my clerk to please provide that  
5                   number to Mrs. Lee.

6                   Any questions, Mrs. Lee?

7                   THE INTERPRETER: No questions.

8                   THE COURT: Okay. Is the State prepared to  
9                   proceed at this time then?

10                  ATTORNEY SCHNEIDER: Yes.

11                  THE COURT: Attorney Vishny?

12                  ATTORNEY VISHNY: Yes.

13                  THE COURT: Then at this time please rise  
14                  for the jury.

15                  (The jury was escorted into the courtroom.)

16                  THE COURT: Good morning everyone, please  
17                  be seated.

18                  And, Attorney Schneider, your first witness  
19                  please.

20                  ATTORNEY SCHNEIDER: Thank you. We would  
21                  call Adam Richardson this morning.

22                  THE COURT: If you would please remain  
23                  standing, sir, the clerk will swear you in.

24                  THE CLERK: Please raise your right hand.

25                  (Oath administered to witness.)



1 THE WITNESS: I do.

2 THE CLERK: Please state your full name and  
3 spell it for the record please.

4 THE WITNESS: Adam J. Richardson, A-D-A-M,  
5 J, R-I-C-H-A-R-D-S-O-N.

6 THE COURT: All right. Sir, you may be  
7 seated.

8 Attorney Schneider, you're first -- feel free to  
9 begin.

10 ATTORNEY SCHNEIDER: Thank you.

11 **EXAMINATION OF ADAM J. RICHARDSON**

12 **BY ATTORNEY SCHNEIDER:**

13 Q Good morning, sir. What is your first name?

14 A Adam Richardson.

15 Q May I call you Adam?

16 A Yes.

17 Q Adam, where do you currently live, what city?

18 A I live in Appleton.

19 Q Back in 2013 did you live in Appleton?

20 A I did not live in Appleton.

21 Q Where did you live then?

22 A I lived in Greenville.

23 Q Were you born and raised here in what we call the Fox  
24 Cities area?

25 A Yes.

1 Q How old are you Adam?

2 A I am 24 years old.

3 Q I want to direct your attention back to Saturday,  
4 December 7th of 2013 into the early morning hours of  
5 Sunday, December 8th. Do you recall where you were  
6 that night?

7 A I do.

8 Q Where were you?

9 A I was in Appleton, Wisconsin downtown on College Ave.

10 Q Were you out with some friends?

11 A I was.

12 Q And who were they?

13 A I was with Trent Thomas and a few other friends of  
14 ours that were in a group.

15 Q Was there a reason you were out that night?

16 A Just out with friends, there was no reason.

17 Q Just a Saturday night?

18 A Correct. Yes.

19 Q Do you remember, Mr. Richardson, where you were at  
20 about two a.m. or just prior to two a.m.?

21 A I do.

22 Q Where was that?

23 A I was at Luna Lounge at the time. It's now under  
24 different ownership. But I was at Luna Lounge.

25 Q And do you recall what you were doing?

1 A I was -- I do, yes.

2 Q And what was that?

3 A I was standing by the front door with Trent Thomas  
4 waiting for a ride to come pick us up.

5 Q Was there anyone else with you?

6 A Yes, there were.

7 Q Other than you and Trent, do you remember the other  
8 parties' names?

9 A Offhand, I do not.

10 Q Okay. Males or females?

11 A Females.

12 Q You said you were waiting for a ride?

13 A Yes.

14 ATTORNEY SCHNEIDER: Your Honor, may I  
15 approach?

16 THE COURT: You may. And again --

17 ATTORNEY SCHNEIDER: I know.

18 THE COURT: -- it's not necessary, although  
19 you're not going to be admonished if you do.

20 ATTORNEY SCHNEIDER: Thank you.

21 Q (BY ATTORNEY SCHNEIDER) Mr. Richardson, I want to  
22 show you an exhibit that's been marked State's  
23 Exhibit No. 2. Are you familiar with what's depicted  
24 here?

25 A I am.

1 Q What is that?

2 A This is a map of the inside layout of Luna.

3 Q And the front doors that you referenced, if you want  
4 to get up, please do so, can you point out where  
5 those are?

6 A Front doors would be right here.

7 Q And that would be an area above what is written main  
8 entrance?

9 A Yes.

10 Q And where about were you prior to becoming aware of  
11 some incident? We're going to talk about that first,  
12 but were you waiting with Trent and your friends?

13 A I was waiting right here by the front door.

14 Q So literally right in front of or very near to the  
15 front doors?

16 A Yes.

17 Q Okay. Show you what's marked as -- we're going to  
18 look just at the top photo, Exhibit 15. Are you  
19 familiar with that photograph?

20 A I am familiar.

21 Q And what does that photograph show?

22 A That shows the inside looking out towards College  
23 Ave., inside of Luna looking out towards College.

24 Q Would have those been the doors that you were  
25 standing near?

1 A Yes.

2 Q Okay. You can grab a seat, Mr. Richardson.

3 How long do you think you and Trent and the  
4 others were by those front doors?

5 A If I had to -- if I had to imagine, I would say  
6 around ten to 15 minutes.

7 Q And while you were there was there anything of  
8 concern that you saw initially while you were  
9 there?

10 A Absolutely not.

11 Q What's the lighting like at this time?

12 A At this time the lighting is -- where I was standing  
13 was poor. Yeah. It was just -- it was very poor.

14 Q Is it a situation where Luna, maybe it's because the  
15 name Luna, the moon, is it lit by some black lighting  
16 inside the business?

17 A There are black lights inside, yes.

18 Q In the area where you were, can you still hear the  
19 music that's playing inside the bar?

20 A I could still hear the music, yes.

21 Q So you're there waiting for a few minutes talking  
22 with your friends, I'm going to assume?

23 A Yes.

24 Q What do you remember then, Adam?

25 A The series of events was basically I was standing at

1 the front door, I heard what sounded like a loud --  
2 like a balloon pop. A group of people rushed past, a  
3 few people were screaming, and the front doors had  
4 opened up and people were running out and as well as  
5 people standing by the front doors not knowing what  
6 was going on. That was -- I mean it was all a matter  
7 of seconds. That was basically everything.

8 Q Okay. So I want to walk you back through that again.  
9 You said you heard a noise like a balloon pop?

10 A Yes.

11 Q So was it something extremely loud?

12 A No, it was not.

13 Q Do you hunt at all?

14 A I do hunt, yes.

15 Q When you heard the noise, you thought it might have  
16 been a balloon pop?

17 A When I initially heard the noise, I had assumed that  
18 it was something like that. After the sights and  
19 smells, I guess, of gunpowder, I kind of imagined  
20 that it was a smaller caliber gun, so in my mind I  
21 thought it was a .22 caliber through some hunting.

22 Q And you said you could smell the odor of gunpowder?

23 A Yes.

24 Q Is that as you were standing by those front doors?

25 A Yes.

1 Q So you hear the noise. Which way did your attention  
2 then focus?

3 A To my -- well, it would have been basically towards,  
4 using the map earlier, towards the inside bar area.

5 Q Okay. And what do you remember seeing in that  
6 area?

7 A I remember seeing somebody laying down, a few people  
8 crowded around, and people rushing towards me.

9 Q Do you remember was it a few people, a lot of  
10 people?

11 A The group that initially passed me was about ten --  
12 at least ten people, I would say, maybe eight, but  
13 probably ten.

14 Q Do you remember anything about the people?

15 A I do. Yes, I do.

16 Q And what do you recall?

17 A I remember the initial group that passed me were of  
18 Asian descent, and I had just glanced up, and then at  
19 that point there were so many other people that ran  
20 out it was kind of like chaos, chaotic.

21 Q Okay. At the time of the noise, of the pop noise,  
22 which way were you focused or where were you looking  
23 if you remember?

24 A I was looking at Trent, at my -- at Trent Thomas,  
25 obviously, who was standing to my left, I believe.

1 Q Did you see any flash at all?

2 A I did not see a flash.

3 Q And did you see anyone who had a gun in their hand?

4 A I did not see anybody with anything in their hand,  
5 no.

6 Q Was your attention focused in the direction of where  
7 you heard the pop when the pop noise -- when you  
8 heard it?

9 A Absolutely, yes, it was.

10 Q Okay. Do you remember anything about -- you said  
11 they were Asians. Do you remember males or females  
12 or was it some of it you couldn't tell?

13 A There was some I couldn't tell. For the most part I  
14 would say male, majority of males.

15 Q After you look over and you see a person down on the  
16 ground, what did you do then, Adam?

17 A At that point I remember people rushing out. I knew  
18 it probably wasn't a good idea to go towards that  
19 person, so at that point I stepped outside and got on  
20 my phone and called 911.

21 Q Did you do anything else other than just step outside  
22 and start calling 911?

23 A I did not. I believe I called 911, and at that point  
24 they told me, if I remember correctly, to stay there  
25 and that people were on their way.



1 Q Do you remember officers arriving?

2 A I do remember officers arriving, yes.

3 Q Was it a long period of time, a short period of time,  
4 if you even know?

5 A Very short period of time.

6 Q The people that you saw pass by when they were going  
7 out the door, do you remember anything specific about  
8 any of them?

9 A The only thing I recall was that there were -- there  
10 was one individual wearing a white beanie cap who  
11 seemed to be concealing something as he was running.  
12 It could have been his cell phone for all I know.  
13 That's the one thing that was in my head.

14 Q And by a beanie cap, do you mean kind of like a  
15 stocking cap?

16 A Yes.

17 Q Okay. Maybe old terminology versus the new  
18 terminology?

19 A Right.

20 Q You provided that information to law enforcement?

21 A Yes.

22 Q But did you have any idea if that person was involved  
23 in any way, shape or form?

24 A I had no idea, no.

25 Q Could have been somebody putting a beer in their

1 pocket?

2 A It could have, yes.

3 Q And when you went -- when law enforcement arrived,  
4 did you go back inside?

5 A I was not allowed back inside at that point.

6 Q You stayed to speak to them?

7 A I did, yes.

8 Q I just want to show you, Adam, a couple more photos.  
9 Prior to this back in 2013 what were you doing for  
10 employment?

11 A I was working at Funset Boulevard.

12 Q Okay. Have you ever worked in a capacity at a bar  
13 prior to 2013 or when this happened?

14 A I have not, no.

15 Q Okay. One too many. Adam, I'm going to show you a  
16 photo board, Exhibit 33, and then what's on Exhibit  
17 33, there are several pictures. Starting like at  
18 Exhibit 33A, and if you need to get up that's  
19 perfectly fine, do you recognize anyone in that  
20 photograph?

21 A I do.

22 Q Okay.

23 A Okay. So -- you want me to point out?

24 Q Yes, please.

25 A That's me.

1                   ATTORNEY VISHNY: I'm sorry, but we can't  
2           hear over here.

3     Q     (BY ATTORNEY SCHNEIDER) You still have to try to  
4           talk like you're talking to the back of the room.

5     A     That's myself, that's me. That's somebody I don't  
6           recognize.

7     Q     Does it look like if I'd say you had a hooded shirt  
8           on?

9     A     Yes, absolutely.

10    Q     And then as you continue 33B, 33C, 33D, we continue  
11          to see you in those frames, correct?

12    A     Yes.

13    Q     And even continuing then down 33E, 33F, 33G and 33H,  
14          we can still continue to see you?

15    A     Yes.

16    Q     Is 33H when it appears that like people are now  
17          starting or trying to exit?

18    A     Yes.

19    Q     And even, Adam, as you continue down the last row,  
20          33I, J, K and L, you're still in that same kind of  
21          spot; is that correct?

22    A     Yes.

23    Q     And then it would be after that point when you went  
24          outside to make your 911 call?

25    A     Yes.

1 Q You can have a seat then. Thank you.

2 When you went outside, you said law enforcement  
3 didn't let you back in --

4 A Correct.

5 Q -- the bar?

6 A Yes.

7 Q Do you remember anything about the weather that  
8 night?

9 A I -- offhand, I remember it being cold. I do not  
10 remember anything other than that.

11 Q And when you -- so you were outside making that 911  
12 call, were there until law enforcement came, did you  
13 ever hear anything else concerning while you were  
14 outside?

15 A I did not. I do not remember anything.

16 Q Okay.

17 ATTORNEY SCHNEIDER: Nothing further.

18 THE COURT: Defense.

19 ATTORNEY WEITZ: Thank you, Your Honor.

20 **EXAMINATION OF ADAM J. RICHARDSON**

21 **BY ATTORNEY WEITZ:**

22 Q So, Mr. Richardson, that night at Luna around the  
23 time of this incident, you're standing by the front  
24 door you said waiting for a ride, right?

25 A Yes.

1 Q And you're standing there with your friend Trent who  
2 I believe you said was to your left, right?

3 A I believe so, yes.

4 Q And as far as the lighting in Luna, certainly within  
5 the bar it's darker and there is black lights and  
6 entertainment style lights, right?

7 A Yes, correct, yes.

8 Q But towards that front area it's a little bit better,  
9 I mean still not real great but there's some  
10 additional lighting in addition to just black lights,  
11 right?

12 A Yes.

13 Q So that like the bouncer can check people's IDs and  
14 things of that nature?

15 A Correct.

16 Q Okay. So you're talking to Trent who is to your  
17 left, and that's when you heard a -- what you  
18 described as a balloon pop, right?

19 A Yes.

20 Q And you just said that at the time that you heard  
21 that balloon pop, you were focused in the direction  
22 that you heard that sound coming from, right?

23 A Yes.

24 Q Okay. And immediately after that, that's when you  
25 see a group of people of Asian descent rushing

1           towards the door, right?

2     A     Yes.

3     Q     Okay. And they were the first ones out the door  
4           immediately after that shot?

5     A     I believe so. I'm not a hundred percent positive.

6     Q     And you told police officers when you talked to them  
7           the night of the incident that that was suspicious to  
8           you that group was the first out the door, right?

9     A     Yes.

10    Q     Okay. And you, after a few seconds after that  
11          initial group runs out, you actually leave Luna  
12          yourself, right?

13    A     Yes.

14    Q     Okay. And that's when you were able to observe that  
15          this same group of people, you saw them running  
16          northbound on Division Street, right?

17    A     Correct.

18    Q     And one person you told police officers when you  
19          talked to them that night -- and going back, you  
20          actually talked to police officers I believe twice in  
21          this case, right?

22    A     Correct.

23    Q     You talked to Sergeant Meyer that night in his squad  
24          car, yes?

25    A     Yes.

1 Q And then later I believe there is a follow-up phone  
2 call with Sergeant Rabas. Does that sound  
3 familiar?

4 A Yes.

5 Q Okay. And you told both of them that one person  
6 stood out in your mind, this person that you  
7 described as first pushing his way past you out the  
8 door, right?

9 A Yes.

10 Q The doors flew open as soon as he gets to the door  
11 and he ran out, right?

12 A Correct, yes.

13 Q And that's one of the people that you saw run around  
14 the corner and north on Division, right?

15 A Correct.

16 Q And you told police officers that the reason he stood  
17 out in your mind is because he was running like he  
18 had something in his pocket, right?

19 A Correct, yes.

20 Q And actually the description that you gave to both  
21 Sergeant Meyer and Sergeant Rabas was that you  
22 thought that it could have been a gun or something,  
23 right?

24 A Correct.

25 Q And again, the description you gave was that he was,

1 quote, concealing something.

2 A Correct.

3 Q And you differentiated this guy from the other people  
4 that you saw running north on Division because you  
5 said everyone else was kind of flailing, I am  
6 assuming, their arms as they ran, but he had  
7 something in his pockets?

8 A Correct.

9 Q Okay. And you were interviewed, as I said, twice in  
10 this matter by both Meyer and Rabas, right?

11 A Correct, yes.

12 Q And both times you told them about this guy that was  
13 running with his hands in his pockets.

14 A Yes.

15 Q And you told them to you it appeared that it could  
16 have been a gun?

17 ATTORNEY SCHNEIDER: Objection. Asked and  
18 answered already.

19 THE COURT: Sustained.

20 ATTORNEY WEITZ: Okay.

21 Q (BY ATTORNEY WEITZ) You additionally told the  
22 officers that he was running with something that  
23 wasn't just his hands I guess?

24 A Correct, yes.

25 ATTORNEY WEITZ: Nothing further. Thank



1           you.

2                       THE COURT: Any redirect, Attorney  
3           Schneider?

4                       **EXAMINATION OF ADAM J. RICHARDSON**

5           **BY ATTORNEY SCHNEIDER:**

6   Q     But again, other than that observation of that  
7           person, you don't know if he was involved in any way,  
8           shape or form?

9   A     I do not.

10  Q     Have you shot a .22?

11  A     I have, yes.

12  Q     Have you shot a .25?

13  A     I have not.

14  Q     How big or how small is a .22?

15  A     If I could hold up -- size? It's about that big.

16  Q     You mean the bullet?

17  A     Yeah.

18  Q     The gun?

19  A     Depending on if it's a handgun or a rifle it's a  
20         different size.

21                     ATTORNEY SCHNEIDER: Nothing further then.

22                     THE COURT: Recross?

23                     ATTORNEY WEITZ: No.

24                     THE COURT: Ladies and gentlemen of the  
25         jury, do you have any questions you wish to submit?

1 If counsel could approach.

2 (A bench conference was held.)

3 THE COURT: Thank you, sir. You may be  
4 seated. I'm sorry. You may be excused. You're  
5 already seated.

6 THE WITNESS: Thank you.

7 ATTORNEY SCHNEIDER: Thank you, Adam.

8 The State would then call Dr. Douglas Kelley.

9 (Oath administered to witness.)

10 THE WITNESS: I do.

11 THE CLERK: Please state your full name and  
12 spell it for the record please.

13 THE WITNESS: My name is Philip Douglas  
14 Kelley, K-E-L-L-E-Y.

15 THE COURT: Attorney Schneider, your  
16 witness.

17 **EXAMINATION OF PHILIP DOUGLAS KELLEY**

18 **BY ATTORNEY SCHNEIDER:**

19 Q Good morning, Doctor. How are you employed?

20 A I'm the chief medical examiner of the Fond du Lac  
21 County Medical Examiner's Office.

22 Q How long have you been employed in that capacity?

23 A Since 2006.

24 Q And do you hold any degrees currently?

25 A Yes. I have a medical degree.

1 Q Where did you obtain that?

2 A That was from Southern Illinois University School of  
3 Medicine.

4 Q And what year?

5 A 1992.

6 Q And do you currently hold any licenses in the State  
7 of Wisconsin?

8 A Yes, I do. I have a medical license.

9 Q Can you explain what your -- what pathology is to the  
10 jury?

11 A Sure. Pathology is the field of medicine that  
12 addresses disease and trauma in people, and forensic  
13 pathology is a subspecialty of pathology.

14 I should explain that pathology has two -- two  
15 facets to it, one is clinical pathology, another is  
16 anatomic pathology. The clinical pathologists are  
17 the ones that run the lab and do the blood bank and  
18 everything like that, and the anatomic pathologists  
19 are the ones that would do biopsies and autopsies and  
20 things like that. So forensic pathology is a  
21 subspecialty of pathology in which the principles of  
22 medicine are applied to problems in the field of law.

23 Q And as part of your duties, do you maintain  
24 curriculum vitae?

25 A Yes.

1 Q Doctor, I'm going to show you what's been previously  
2 marked Exhibit 58. First, for the record, can you  
3 confirm that it's three pages in length?

4 A Yes, it is.

5 Q And are you familiar with what Exhibit 58 is?

6 A Yes.

7 Q What is it?

8 A This is a copy of my curriculum vitae.

9 Q So you said since 2006 you served as the Fond du Lac  
10 County Medical Examiner?

11 A That's correct.

12 Q Do you have experience in other medical examiners'  
13 offices prior to 2006?

14 A Yes. Before coming to -- well, go the other  
15 direction. After I finished my training in 1999 I  
16 stayed with the Milwaukee County Medical Examiner's  
17 Office as staff. I spent a short time, ten months or  
18 so, as a private forensic pathologist in Illinois,  
19 and then worked with the District 21 Medical  
20 Examiner's Office down in Fort Myers, Florida.  
21 That's -- when I came back after that is when I came  
22 back to Wisconsin and I went to work as an associate  
23 medical examiner for the Waukesha County Medical  
24 Examiner's Office. That was from 2004 to 2006. And  
25 then of course the Fond du Lac office came open and I

1           took this job.

2       Q     And do you belong to any memberships or organizations  
3           related to your work as a medical examiner?

4       A     Yes.

5       Q     What is that?

6       A     Well, I belong to the National Association of Medical  
7           Examiners and the American Academy of Forensic  
8           Sciences and the Wisconsin Coroners and Medical  
9           Examiners Association, College of American  
10          Pathologists.

11                   ATTORNEY SCHNEIDER: I move Exhibit 58 into  
12          evidence at this time, Your Honor.

13                   THE COURT: Any objection?

14                   ATTORNEY WEITZ: No.

15                   THE COURT: 58 will be received.

16       Q     (BY ATTORNEY SCHNEIDER) Can you talk about your work  
17           as a medical examiner to the jury?

18       A     Sure. As I said, the -- you know, medical examiner,  
19           or forensic pathologist, I should say, applies the  
20           principles of medicine to issues in the field. So  
21           it's a medical legal field. And basically what my  
22           job is is to determine what the cause and manner of  
23           death is in cases which fall under my jurisdiction.  
24           So that obviously involves the performance of  
25           autopsies but also the investigation of cases for the

1 collection of information to combine with the  
2 autopsy. So basically as a medical examiner that's  
3 my job. It's a -- it's a statutory job. There is a  
4 state statute that guides us in which cases need to  
5 be investigated and the cause and manner of death  
6 determined by a medical examiner.

7 Q Okay. And you're with the Fond du Lac County Medical  
8 Examiner's Office. Do you work exclusively just with  
9 Fond du Lac County?

10 A No. Yeah. I -- I should have mentioned how that  
11 works. In Wisconsin all 72 counties decide for  
12 themselves whether they have a coroner or medical  
13 examiner, and in Fond du Lac it's a medical examiner.  
14 Now, you don't have to be a doctor to be a medical  
15 examiner or a coroner. As a matter of fact, there is  
16 only four counties that have forensic pathologists,  
17 medical examiners. So what the other counties have  
18 to do when they need an autopsy is they have to go to  
19 one of the counties that do have a forensic  
20 pathologist medical examiner and contract with them  
21 to do their autopsies for them. So there is -- in  
22 addition to the four counties, there's the University  
23 of Wisconsin, so there is basically five places in  
24 the State of Wisconsin that -- that actually do the  
25 autopsies. Does that make sense?

1 Q So is it a situation where Outagamie County law  
2 enforcement or the coroner's office will contact you  
3 when they need an autopsy performed?

4 A That's right.

5 Q Do you have another medical examiner assisting you in  
6 your office?

7 A Yes.

8 Q And how long have you had an assistant medical  
9 examiner?

10 A She has been with me for three years now.

11 Q Prior to that were there others who filled the role  
12 of an assistant ME or medical examiner?

13 A Yes.

14 Q If you know, and however you want to estimate this,  
15 Doctor, how many autopsies do you yourself perform,  
16 whether it's in a year or in a month, whatever  
17 estimate is easier for you?

18 A We -- you know, I probably average about 250 a year,  
19 which -- which is the recommendation by the National  
20 Association of Medical Examiners, so I would say -- I  
21 would say between 220 and 250 a year.

22 Q So almost one a day every Monday through Friday on  
23 average?

24 A Pretty much, yes.

25 Q How do you normally become involved in a case from a

1 county other than Fond du Lac?

2 A Well, really it's just as simple as you -- as you put  
3 it a minute ago. It's a -- they will call or contact  
4 us by phone or e-mail and just let us know that they  
5 have a case that's going to require postmortem  
6 examination, and then -- excuse me, and then what we  
7 will do is we'll have somebody call them back and  
8 schedule it. So each day we have a number of cases  
9 that we'll be scheduling from perhaps a variety of  
10 different counties. So that's basically how it --  
11 how it works. It's pretty informal.

12 Q Can you explain to the jury generally what's the  
13 purpose when you do an autopsy?

14 A Well, the -- the purpose of an autopsy is to  
15 determine what the cause of death is and to answer  
16 any questions that exist in -- with regards to the  
17 person's death or maybe even their life. You know,  
18 you can -- you can determine some things from looking  
19 at someone's body that might explain some things that  
20 happened in life. So that's basically the purpose.

21 Q So when a person comes to you and you're to perform  
22 an autopsy on them, and, please, there is a bottle of  
23 water though. I don't think that's been used yet  
24 today so feel free if you need it.

25 A Okay. Thank you. Actually, I'll take you up on



1           that.

2       Q     When someone, a body, comes in to you to do an  
3           autopsy, is there kind of a standard checklist you  
4           follow in performing an autopsy?

5       A     Okay. Sorry. I'm fighting a very nasty virus here.

6           Typically the cases that come in, you're never  
7           entirely sure what -- what you're dealing with, and  
8           so I think it's best to just treat every case the  
9           same. So yes, there is a checklist, so to speak,  
10          there's a routine or a procedure that we would follow  
11          to -- to perform a postmortem examination.

12          And typically what we'll do is the person will  
13          come to us and they'll come in a transport pouch  
14          that's sealed, and I'll open that pouch and I'll look  
15          at the person and take photographs as needed, collect  
16          evidence as needed, and then -- and then remove them  
17          from the pouch and again examine the person with  
18          their clothes on without cleaning anything up, doing  
19          the same thing over again. Then those -- those  
20          clothes will be removed and then we'll do the same  
21          thing again. And then we'll clean off any --  
22          anything that's -- any dirt or fluid or anything like  
23          that that's on the body and we'll do it again. So,  
24          you know, just doing an external examination is a  
25          layering effect. It's -- we're documenting

1 everything from the very beginning all the way to the  
2 point in which we do an internal examination, which  
3 is probably what most people think of when they think  
4 of an autopsy, and that's making incisions so that we  
5 can examine the organs and tissues and look for  
6 evidence of disease and trauma. But that's -- that's  
7 pretty typical.

8 Now, also, when we're going through this  
9 process, we're collecting not just evidence if we see  
10 it but, you know, we'll also collect specimens for  
11 toxicological analysis, so the blood, urine, things  
12 like that. And in the end, the -- the idea is that  
13 we've documented everything and we've gone through  
14 this methodical way of examining the body and we're  
15 going to put it all together at the end and hopefully  
16 have a cause of death.

17 Q Is it something, Doctor, where let's assume you have  
18 an obvious area of injury to the abdominal area, is  
19 that the only area you examine then when you do your  
20 internal examination?

21 A No. No. Every autopsy is a full autopsy. Because,  
22 again, we're not just looking for just cause of  
23 death, we're looking to answer all the questions.  
24 You can't answer the questions if you don't look at  
25 everything. So every -- every autopsy that's

1 performed in our office is complete, beginning to  
2 end. Because we're as interested in whether a person  
3 has colitis or, you know, or a prostate problem as we  
4 are that they have injuries from a motor vehicle  
5 accident because, you know, the questions that come  
6 up may be with regards to the prostate problem and  
7 not the injuries to the vehicle accident.

8 So anyway, the -- you know, every autopsy is  
9 complete and it involves a -- an examination of all  
10 of the organs and tissues of the body.

11 Q Are the organs actually removed during the process of  
12 an autopsy?

13 A They are.

14 Q And what other than removing them is done?

15 A Other than removing them?

16 Q Yup.

17 A Well, I mean, they are -- they are examined as is,  
18 and then when they are removed they are dissected and  
19 then they're replaced -- they're placed back.

20 Q Okay. And is it part of your practice then to  
21 prepare a report on your autopsy?

22 A Yes.

23 Q And ultimately, as part of that autopsy, do you  
24 prepare or come to a conclusion as to the cause of  
25 death?

1 A Yes.

2 Q And the parts that you have noted about doing the  
3 external and then moving to the internal examination,  
4 anything you note along that process also put into  
5 your report?

6 A Well, yes. We -- I mean we'll document everything  
7 from, you know, identifying marks and scars to the --  
8 the medical intervention, you know, whether they have  
9 EKG patches and a breathing tube and things like  
10 that. So we document everything. It really should  
11 be a report that allows you to visualize what we're  
12 seeing at autopsy.

13 Q Is it something where even on that external exam you  
14 note any bruises or scrapes or scratches a person  
15 has?

16 A We will do that, yes.

17 Q Is that something where the notation of that  
18 sometimes is connected to the cause of death?

19 A Sometimes it is, yes.

20 Q And is it your practice though, even if someone had a  
21 bruise on their shin, you would still note it, even  
22 if it may not be any part of the cause of death?

23 A Yes.

24 Q Do you recall if you were working back on December  
25 10th of 2013, Dr. Kelley?

1 A Yes.

2 Q And were you asked to assist in a case involving the  
3 Appleton Police Department?

4 A Yes.

5 Q And was a call made to your office as you've  
6 described related to an autopsy that they needed  
7 assistance with?

8 A Yes.

9 Q And did you perform an autopsy on an individual named  
10 Joshua Richards?

11 A I did.

12 Q I'm going to show you what's been marked Exhibit 59,  
13 and I think after the cover sheet the pages are  
14 numbered one through ten. Would that be correct,  
15 Doctor?

16 A Yes.

17 Q Okay. And what is Exhibit 59?

18 A Exhibit 59 is a copy of my autopsy report.

19 Q And does it note the time that the autopsy was  
20 performed?

21 A Yes.

22 Q And what time was that?

23 A The date of the autopsy on the face page is Tuesday,  
24 December 10th, 2013, at 9:45.

25 Q And did it -- did anyone from law enforcement attend

1 the autopsy?

2 A Yes. Detective Meyer, Detective Cary Meyer from the  
3 Appleton Police Department was present.

4 Q Is it common to have law enforcement attend  
5 autopsies?

6 A Yeah. Especially in cases in which there's traumatic  
7 death or non-natural death. It's not uncommon to  
8 have law enforcement witnessing the procedure.

9 Q Do they sometimes come and take their own  
10 photographs?

11 A They do sometimes, yes.

12 Q As you began your autopsy, and please refer to  
13 Exhibit 59 if you need to, Doctor, on Mr. Richards,  
14 was there anything you were aware of prior to  
15 starting the autopsy about him or what had happened  
16 prior to him coming to you?

17 A Yes. Let's see. Best way to explain this is  
18 everyone is -- every family is offered to be a -- an  
19 organ or tissue donor, so he -- he was in the  
20 hospital and that was offered and the family did  
21 decide to allow his organs to be donated. So that --  
22 that's something that has to take place when a person  
23 still has blood pressure, organs have to be perfused,  
24 so before he came to me he actually had undergone the  
25 procedure to have his -- many of his organs donated

1           for transplantation.

2       Q     And was that apparent when you began your external  
3           examination?

4       A     Yes, it was.

5       Q     What areas of note did you first observe during that  
6           external examination on Mr. Richards?

7       A     Well, the most notable area was to the left side of  
8           the head, just -- just in front of the lower left  
9           ear. There was a -- a -- a wound there which I  
10          identified as a gunshot wound, and he had a little  
11          bit of bruising around his -- his right eye that is  
12          consistent with a fracture to the base of the skull,  
13          but for the most part -- for the most part that's the  
14          extent of the external injury.

15      Q     Is it something based upon your examination of Mr.  
16           Richards you could tell that that was a gunshot  
17           wound?

18      A     Yes.

19      Q     And what was that, what characteristics might have it  
20           had?

21      A     Well, it's a perforation, it was a perforation with  
22           some small tears or lacerations around the edges.  
23           There was a distribution of soot around the -- the  
24           wound, the entrance wound. There was some abrasion  
25           there from the bullet passing through the skin. So

1           all -- all these features are very typical of a  
2           gunshot wound.

3       Q     Is it something that you took measurements of this  
4           area?

5       A     Yes.

6       Q     You note -- you mentioned that there was soot near  
7           the gunshot wound. What if anything did that tell  
8           you?

9       A     Well, okay, more comes out of the end of the gun than  
10          the bullet. Flame comes out of the end of the gun,  
11          soot or basically smoke from the burning gunpowder  
12          comes out of the end of the gun, unburned gunpowder  
13          particles come out of the end of the gun, and some  
14          burning particles too. You can even have, you know,  
15          small pieces of metal from the bullet come out of the  
16          end of the gun. So there's a lot of things that come  
17          out of the end of the gun other than the bullet.

18            Now, as you increase the distance between the  
19          end of the gun and the skin, as you might imagine,  
20          those elements will -- they'll strike the skin at  
21          closer distances, but as you move away they'll fall  
22          away. Okay? So when the soot -- when the soot exits  
23          the end of the gun, it can distribute itself around  
24          the wound, and as you get farther away, that soot  
25          pattern, you know, starts to dissipate and become not



1           just wider but also fainter. So that's something  
2           that you can look at to determine the range. The  
3           other thing is that there are small abrasions around  
4           the edge of the wound. Sometimes those little  
5           gunpowder particles can hit the skin and cause little  
6           abrasions if the gun is -- is within a certain  
7           distance, and that's called gunpowder stippling.  
8           Also called tattooing. And that also gives you some  
9           idea about the range of the firing. And at some  
10          point you're far enough away that nothing strikes the  
11          -- the skin except for the bullet. So that's a more  
12          distant wound. So those are the characteristics that  
13          we're looking for.

14                 In this particular instance there was -- there  
15          was soot around the -- around the wound which  
16          indicates that you're in close range. Now, having  
17          said that, the -- the only way to know exactly how  
18          far is to have the gun and to test fire it at  
19          different distances and look for the same -- the same  
20          width of soot deposition and that will tell you what  
21          the exact distance is. So I can only -- I can only  
22          give you generalities if I don't have information  
23          about the -- about the weapon or if we weren't able  
24          to test fire the weapon.

25    Q       Was there any gunfire stippling you noted?

1     A     There was a little bit. And by the way, that can  
2           begin fairly close to the skin, depending on the  
3           weapon. It can -- you can see some gunpowder  
4           stippling out for quite a distance, but in this  
5           particular instance there was only a few little --  
6           little particles. It was mostly soot. So that told  
7           me that this was a relatively close range wound.

8     Q     And you haven't been given any information that there  
9           was any testing done on a gun in this case, correct?

10    A     No. I -- no, I didn't ask either.

11    Q     Okay. When you say "close range", I know you can't  
12           give an exact number, but is there a range that you  
13           typically find that in or that you're comfortable  
14           saying based upon your opinion and your practice and  
15           your experience that it might have been?

16    A     Well, for handguns, typically soot is pretty well  
17           dissipated beyond a foot, but when you see the -- the  
18           soot deposition really dense and small around the  
19           edges of the wound, that tells you you're closer. So  
20           while I can't say, I would have to say that, you  
21           know, this is anything from mere contact out to a few  
22           inches. That would be my estimation.

23    Q     You said near contact to a few inches?

24    A     Yeah. In other words close to the skin but not  
25           touching the skin.

1 Q So I'm assuming during the external exam then you  
2 looked at the area of injury to the wound near the  
3 left ear. Did you notice anything else when you did  
4 an examination on his head? You talked about the  
5 bruising by the right eye. Was there anything else  
6 on the right side of his head that you noted?

7 A Yeah. There was -- you could palpate or feel  
8 something underneath the skin on the right side,  
9 which later in doing the examination later that  
10 represented the -- the fracture site and the  
11 underlying bullet to the right superior portion of  
12 the -- of the scalp.

13 Q And photographs were taken of Mr. Richards' left ear  
14 and the area of injury?

15 A Yes.

16 Q During the external exam, did you note any other  
17 areas of trauma or injury?

18 A No, no, I didn't.

19 Q And then when you began your internal exam, can you  
20 describe, we'll focus just when you examined the head  
21 and skull of Mr. Richards, what you found?

22 A Well, there -- the wound path -- well, as you might  
23 imagine, the entrance wound is right in front of the  
24 lower left ear, and the wound path passed upwards  
25 left to right and slightly front to back. So it

1 enters the -- the left lateral base of the skull and  
2 damages the brain obviously and then exits to the  
3 right superior or right upper portion of the side of  
4 the -- of the skull. It doesn't have enough energy  
5 to -- to break the skin and leave the -- leave the  
6 head, so it -- it perforated the skull but it didn't  
7 get out of the skin. So on this side what we had was  
8 a -- an exit wound from the skull and a projectile or  
9 bullet sitting right inside of that exit site.

10 Q So meaning the skin of Mr. Richards wasn't perforated  
11 and there wasn't an exit of the bullet?

12 A That's right.

13 Q And when you talk about wound path, you're talking --  
14 do you want to explain to the jury a little bit about  
15 what you mean when you say someone is in an anatomic  
16 position?

17 A Yes. We -- when we talk about these things, we need  
18 to -- we need to speak the same language obviously,  
19 so what we talk about is the body in anatomic  
20 position which means the body standing straight up  
21 and down with the palms forward. That's the anatomic  
22 position. So when we say, you know, front to back --  
23 I'm sorry. Let me back up a second. So when you  
24 look at the body that way, front is front, back is  
25 back, left -- their left is their left and right is

1 right and up and down, so that gives us a reference  
2 point that we can -- we can share but keeping in mind  
3 that we're describing in the anatomic position but  
4 we're not necessarily saying that that's the position  
5 the body was in when it received the gunshot wound  
6 because the body moves, you know, in many different  
7 ways, so -- so in other words, that's just a  
8 reference that we can use to understand what we're  
9 saying when we write reports.

10 Q And were you able to, in essence, and I think you  
11 somewhat described this, track this wound path from  
12 Mr. Richards, the entrance wound by his left ear you  
13 said then to the top upper right of his head?

14 A That's correct.

15 Q Area of hemorrhage and bleeding within the brain I'm  
16 assuming extensively because of the wound?

17 A Yes.

18 Q And you noted that you were able to recover the  
19 bullet?

20 A Yes. I recovered the bullet from underneath that  
21 exit site.

22 Q You talked about his right eye during the external  
23 exam, there being bruising around the right eye. Can  
24 you explain what that was caused by?

25 A Yeah. That's not uncommon. That's actually a very

1 common sign of a basilar skull fracture, so if you  
2 see somebody who has -- actually referred to as  
3 raccoon eyes, if you see somebody like that, you --  
4 in an emergency department, for instance, you would  
5 be concerned that they have a basilar skull fracture  
6 because what happens is that the fractures at the  
7 base of the skull create hemorrhage that gets into  
8 the -- the tissues around the eyes and of course the  
9 eyelids will display that -- that purple blood that's  
10 collecting in the soft tissues. So he had it to the  
11 right eye so -- and he does have a basilar skull  
12 fracture to that right side by the way.

13 Q One second, Doctor. The bullet that was found in Mr.  
14 Richards' skull, that was collected?

15 A Yes.

16 Q Is that a process, Doctor, when you do that that you  
17 mark that in some fashion?

18 A Yes.

19 Q And what is ultimately done after it's collected?

20 A Ultimately it's turned over to -- usually to --

21 Q And you can talk that way it's maybe a louder.

22 A Usually what we'll do is we'll turn this over to the  
23 law enforcement agent that's present, so the  
24 detective will sign it over using, you know, proper  
25 chain of custody, we'll make a sheet. So that's how

1 we do it.

2 Q Is there sometimes, based upon what you locate, in  
3 terms of the bullet you can make, maybe not an exact  
4 estimate, but some estimate as to what caliber that  
5 was?

6 A Well, I -- admittedly, I try not to do that. I can  
7 tell the difference between a small caliber and a  
8 large caliber, a .50 caliber bullet and a .22 caliber  
9 bullet, the difference is pretty obvious, but going  
10 further than that to say that that's a .38 caliber, I  
11 don't typically do that. If it's going to get  
12 examined by a firearms examiner, that's the person to  
13 do it anyway.

14 Q And even with some of the organs that Mr. Richards  
15 had gone through the donation process, were there  
16 other organs you still examined and took out and  
17 weighed?

18 A Yes. You know, certainly, you know, they had done an  
19 evaluation of those organs and had removed them, so I  
20 could -- couldn't examine them obviously other than  
21 to receive a report that says everything looked good,  
22 but yes, anything that's left, we continue on with  
23 the autopsy as if they were there. That doesn't  
24 change the -- the completeness of the rest of the  
25 autopsy.

1 Q Okay. I'm going to bring this a little bit close to  
2 you and then I'm going to show you Exhibit 70 and  
3 then 71. Are you familiar with what's depicted  
4 there, Doctor?

5 A Yes.

6 Q Okay. I'm going to put it over here actually. And  
7 that might -- what's shown in exhibit -- first the  
8 top exhibit, Exhibit 70?

9 A Well this is -- this is our label and our container  
10 or box, and this is the bullet that was recovered,  
11 and this is just a close-up of that bullet.

12 Q So 71 would be a close-up?

13 A Correct.

14 Q Okay. Based upon -- is everything in your office  
15 then assigned a case number that might be  
16 collected?

17 A Yes. Every case gets a new unique case number.  
18 That's up here.

19 Q And is that also then utilized in any measurements  
20 taken of items, the case number?

21 A Oh, you mean the -- the scale here, yes, this is the  
22 case number here with its adhesive strip that's  
23 attached to a scale, both centimeters and inches.

24 Q So the reference 13-0982 has nothing to do with the  
25 bullet or the item we're seeing here, it's your case



1 number?

2 A That's correct.

3 Q Based upon the bullet that you found, can you give an  
4 approximation whether it was a large caliber or small  
5 caliber?

6 A It looks small caliber to me.

7 Q Okay.

8 ATTORNEY SCHNEIDER: I'd move 70 and 71  
9 into evidence.

10 THE COURT: Any objection?

11 ATTORNEY WEITZ: No.

12 THE COURT: 70 and 71 shall be received.

13 Q (BY ATTORNEY SCHNEIDER) Then, Doctor, I'm going to  
14 show you -- and for purposes with the jury I'm going  
15 to show you a folder. Please open it. We're going  
16 to talk about a series of photographs. On the back  
17 of each photograph will have an exhibit number on it.

18 ATTORNEY SCHNEIDER: Do you want to come up  
19 while he's doing this?

20 Q So you're first looking at Exhibit 61; is that  
21 correct?

22 A Yes.

23 Q What is depicted there in Exhibit 61, Doctor?

24 A Exhibit 61 is a photograph of the left side of the  
25 head and shows the gunshot wound, and this is

1 obviously before anything's been cleaned up.

2 Q Then moving on to Exhibit 62?

3 A 62 also shows the left side of the head. It's a  
4 little closer, and it's after the wound has been  
5 cleaned.

6 Q Then moving on to Exhibit 63?

7 A Exhibit 63 is just a -- a -- an even closer view of  
8 the same wound.

9 Q And are you taking a measurement in that exhibit,  
10 Doctor?

11 A Well, I mean, I'm -- the scale is there to show the  
12 dimensions of the wound, but, yeah, just showing that  
13 plus all the other features of the skin surrounding  
14 the wound.

15 Q So previously on Exhibit 61, 62 or 63, are those some  
16 of those where you could see that soot or that  
17 stippling?

18 A Yeah. I think you can see in exhibit -- in Exhibit  
19 61 you can see that there's some -- some black or  
20 dark gray material immediately surrounding the wound.  
21 It's been cleaned off in the next two photographs  
22 though. You can actually see a little bit of -- of  
23 soot and searing at the edges of the wound that I  
24 didn't quite get cleaned off, so you can still see it  
25 in the closest view, but it's -- it's there.

1 Q And you were just looking at Exhibit 63 for the  
2 record, correct?

3 A 63, correct.

4 Q And then moving on, Exhibit 64, what's depicted  
5 there?

6 A Exhibit 64 is the right side of the head. This is  
7 the -- this is that bony plate that the bullet is  
8 sitting underneath.

9 Q Then moving on to Exhibit 65?

10 A And then Exhibit 65 depicts if you were to remove  
11 that piece of bone you can see -- clearly see the --  
12 the projectile underneath.

13 Q And that would have been the bullet that you  
14 ultimately then recovered from Mr. Richards?

15 A Yes.

16 Q And then moving on to Exhibit 66?

17 A Exhibit 66 is a photograph of the right hand.

18 Q Say the top of the hand?

19 A Yes.

20 Q Okay. And then moving on to Exhibit 66 or 67 is the  
21 -- which, right or left?

22 A 67 is the right hand.

23 Q And we say that was the palm view?

24 A It is the palm view.

25 Q Okay. And then moving on to 68?

1 A 68 is the left hand, the back of the left hand.

2 Q Okay. And then 69?

3 A 69 is kind of a palm view of the left hand.

4 Q Okay. And Exhibit 61 through 69, fair and accurate  
5 as you recall during that autopsy?

6 A Yes.

7 Q Okay. And ultimately, Doctor, after your examination  
8 and collecting of the items and the evidence, were  
9 you able to come to a conclusion as to the cause of  
10 death for Mr. Richardson?

11 A Yes.

12 Q And what was that cause of death?

13 A I -- I indicated his cause of death to be a gunshot  
14 wound to the head.

15 Q And is there a process whereby -- and that's included  
16 in your report, Exhibit 59?

17 A Yes. It's on the front page.

18 ATTORNEY SCHNEIDER: I would move Exhibit  
19 59 into evidence at this time, Your Honor.

20 THE COURT: Any objection?

21 ATTORNEY WEITZ: No.

22 THE COURT: 59 shall be received.

23 Q (BY ATTORNEY SCHNEIDER) Further then, Doctor -- I'll  
24 wait for you to finish.

25 A Sorry.

1 Q That's okay.

2 Is that cause of death then communicated back to  
3 the coroner's office for the county in which you  
4 perform the autopsy?

5 A Yes, it is.

6 Q And does that doctor or does the coroner then use  
7 that determination in the death certificate?

8 A Yes.

9 Q I'm going to show you what's been marked Exhibit No.  
10 60. It's a certified death certificate, correct?

11 A Yes.

12 Q And for Joshua J. Richards?

13 A Yes.

14 Q And is your cause of death listed on this in -- I  
15 think it's Item No. 41?

16 A Yes, it is.

17 Q And what is that?

18 A Gunshot wound to head.

19 ATTORNEY SCHNEIDER: I would move Exhibit  
20 60 into evidence at this time, Your Honor.

21 THE COURT: Any objection?

22 ATTORNEY VISHNY: No.

23 THE COURT: Exhibit 60 shall be received.

24 ATTORNEY SCHNEIDER: Thank you. I don't  
25 have any other questions.

1 THE COURT: Attorney Weitz?

2 ATTORNEY WEITZ: Thank you, Your Honor.

3 **EXAMINATION OF PHILIP DOUGLAS KELLEY**

4 **BY ATTORNEY WEITZ:**

5 Q First of all, Dr. Kelley, you said that in a typical  
6 year you do somewhere in the neighborhood of  
7 approximately 250 autopsies per calendar year,  
8 right?

9 A Yes.

10 Q And those autopsies that you do, that's -- that's not  
11 all for homicide cases, right?

12 A No, that's right.

13 Q Okay. So autopsies can be done for things that are  
14 other than a homicide such as like an accident or  
15 death by natural causes, suicide, things of that  
16 nature?

17 A Yes, that's right.

18 Q Okay. Turn -- and very few of those actually are  
19 homicide cases.

20 A That's correct.

21 Q Okay. Turning your attention to the autopsy that you  
22 performed in this case, one of the things that you  
23 look at as part of kind of your overall examination  
24 and examination of this case is toxicology, correct?

25 A Yes.

1 Q Okay. And in this case there was some blood that was  
2 collected and sent to a lab for toxicology testing.

3 A That's right.

4 Q And that was collected on December 8th at 2:27 a.m.?

5 A I believe so. I received the admission specimens.

6 Q If you need to refer to your report.

7 A Yeah. Yes, you're --

8 Q Page 9 may help refresh your recollection.

9 A Yes, you're correct.

10 Q Okay. And in this case that blood was collected at  
11 the hospital, right, that wasn't something that you  
12 collected?

13 A That's correct.

14 Q Okay. And as you describe in your report, this would  
15 have been blood that was collected antemortem or, in  
16 other words, before death?

17 A That's right.

18 Q And according to the toxicology results of that  
19 testing, those samples showed a blood alcohol level  
20 of .083?

21 A That's right.

22 Q But in this case, because it was collected at the  
23 hospital, administration of any sort of fluids or  
24 blood transfusions or things of that effect could  
25 dilute the concentration or alter that blood alcohol

1 level.

2 A That's a possibility.

3 Q Okay. So it's possible that Mr. Richards' blood  
4 alcohol could have been higher at the time of the  
5 shooting?

6 A That's a possibility.

7 Q Okay. Turning now to the cause of death, you  
8 declared that to be a single gunshot wound to the  
9 head, correct?

10 A Yes.

11 Q Okay. And as far as the trajectory of this gunshot,  
12 it was a -- a straight trajectory, right?

13 A Yes.

14 Q Okay. And it entered just in front of the lower ear,  
15 so would that be fair to say, kind of by your ear  
16 lobe, that little kind of soft area?

17 A Right. Right. Right in front of the left ear.

18 Q Okay. And the trajectory it traveled from the left  
19 side of the head to the right side of the head?

20 A It did.

21 Q And it was slightly front to back, so from the front  
22 of the head towards the back slightly?

23 A Yes, slightly.

24 Q And the most notable thing was that it was sharply  
25 upward, so it enters near the left ear but actually



1 ends up, the bullet comes to rest just below the  
2 scalp towards the top, the right head?

3 A That's right.

4 Q And again there was no exit wound, the bullet  
5 actually didn't have enough velocity to exit the  
6 head?

7 A Correct.

8 Q You testified earlier that there was some bruising to  
9 the right eye that was observed. That would have  
10 been a result of that skull fracture that you  
11 discussed?

12 A Yes.

13 Q And the fracture was a result of the gunshot itself,  
14 right?

15 A Yes.

16 Q So that wouldn't be from any sort of trauma or  
17 injuries, it was from the gunshot?

18 A That's right.

19 Q Besides that and the gunshot, you didn't observe any  
20 other injuries in your examination of Mr. Richards'  
21 body, right?

22 A No.

23 Q Okay. And as far as the wound, you said that there  
24 was soot and stippling observed and that's what  
25 allowed you to say that it wasn't a direct contact

1 but certainly a close range when the shot was fired.

2 A Yes.

3 Q Okay. So the gun could have been as close as a  
4 fraction of an inch all the way up to a few inches  
5 away at the time it was fired?

6 A Yeah. You know, you can start seeing some --  
7 obviously you can see soot with a contact all the way  
8 out to a distance, but stippling usually begins, I  
9 would say, somewhere around a half an inch or so and  
10 then continues outwards, so yeah, I think -- I think  
11 that's a -- that's a -- that's a good estimation, but  
12 again, the only way to know for sure is to test fire  
13 the weapon.

14 Q Sure. But in your estimation it would be anywhere  
15 from a fraction of an inch, half an inch, all the way  
16 up to a few inches?

17 A Sure. Yes.

18 Q Okay. Now, as far as this wound, it's possible that  
19 the gun made contact with the head before or after  
20 the shot, right?

21 A That's possible.

22 Q Okay. And if there were contact between the gun  
23 itself and the head, typically you would see some  
24 sort of abrasion to the -- the skin, right?

25 A Well, I mean, if you mean -- if you mean that the gun

1 hit the skin?

2 Q If someone is struck with the gun itself?

3 A Oh, okay. Well, it depends, but yes, if you -- if  
4 you strike somebody with a portion of the gun, you  
5 definitely can get an abrasion or a scrape or a  
6 bruise. The abrasions and everything that I've been  
7 describing though were from the energy of the -- of  
8 the actual interaction of the gun with the skin  
9 though.

10 Q So in this circumstance, if the gun made contact with  
11 the head in that exact same location where there was  
12 the wound, you wouldn't be able to see that abrasion  
13 or anything because it would be obscured by the  
14 actual wound itself from the bullet entry?

15 A No, I didn't. I mean if -- if you're referring to,  
16 you know, a pattern abrasion from the muzzle of the  
17 gun, I -- that's something I didn't see. I'm not  
18 sure if that's what you're referring to. When the  
19 gun is in contact with the skin when it fires, the  
20 skin, it slams against the front of the gun, so to  
21 speak, and you get abrasions that are patterned and  
22 actually will show the pattern of the muzzle of the  
23 gun. That's not something I saw in this case.

24 Q And that would be if the gun is actually pressed up  
25 against the skin when it's fired?

1 A That's a contact wound.

2 Q So what I'm trying to get at here is if the gun made  
3 contact with the head either immediately before or  
4 after the shot but not right when the shot is fired,  
5 that would be consistent with what you observed?

6 A Could you say that one more time? I'm sorry.

7 Q If the gun strikes the head -- by way of example,  
8 let's say that it's before the shot is fired and then  
9 the shot is fired as the gun is kind of traveling  
10 away from the head, that would be consistent with  
11 what you observed because the -- the shot itself  
12 would not be fired when it's in contact with the head  
13 but it may have made contact before or after the  
14 shot?

15 A I see what you mean. Yes. If the bullet passes  
16 through an area that has a previous injury, that  
17 would be -- I wouldn't be able to see that.

18 Q Okay. And then just to clarify again, Dr. Kelley,  
19 you didn't see any other injuries to the body besides  
20 the -- the hemorrhaging to the eye and the wounds  
21 directly from the gunshot itself, right?

22 A That's correct.

23 Q Okay. So no evidence that he was punched or struck.

24 A That's correct.

25 Q Okay.

1                   ATTORNEY WEITZ: Nothing further. Thank  
2                   you.

3                   THE COURT: Attorney Schneider?

4                   ATTORNEY SCHNEIDER: No follow-up.

5                   THE COURT: Members of the jury, do you  
6                   have any questions you wish to submit for  
7                   consideration?

8                   (No response.)

9                   THE COURT: Thank you, sir. You'll be  
10                  excused.

11                  ATTORNEY SCHNEIDER: We do have a few more  
12                  witnesses we would like to get through possibly  
13                  before the lunch hour.

14                  THE COURT: That would be fine.

15                  ATTORNEY SCHNEIDER: Mr. Duros is taking  
16                  over the questioning of the next witness.

17                  THE COURT: Very good. Mr. Duros?

18                  ATTORNEY DUROS: State calls Marissa  
19                  Emenecker.

20                  THE COURT: Would you please come to the  
21                  witness stand and remaining standing, the clerk will  
22                  swear you in.

23                  THE CLERK: Please raise your right hand.

24                  (Oath administered to witness.)

25                  THE WITNESS: Yes.

1 THE CLERK: Please state your full name and  
2 spell it for the record please.

3 THE WITNESS: Marissa Ann Emenecker,  
4 M-A-R-I-S-S-A, A-N-N, and then E-M-E-N-E-C-K-E-R.

5 THE COURT: Mr. Duros, your witness.

6 ATTORNEY DUROS: Thank you.

7 **EXAMINATION OF MARISSA ANN EMENECKER**

8 **BY ATTORNEY DUROS:**

9 Q Where do you currently live?

10 A In Menasha.

11 Q Did you ever live in Appleton?

12 A When I was like ten or eleven.

13 Q So you've been living in Menasha for quite some  
14 time?

15 A About a year or so.

16 Q Have you ever been to downtown Appleton?

17 A Yeah.

18 Q Do you come to downtown Appleton frequently?

19 A Yeah.

20 Q Back in late 2013, did you tend to come to downtown  
21 Appleton?

22 A What was that? Sorry.

23 Q Sorry. You were a little distracted.

24 Back in late 2013 did you tend to come to  
25 downtown Appleton every once in a while?

1 A Yeah. I would go to Sharks every once in a while.

2 Q Sharks. Is that a bar?

3 A Pool hall, bar, however you want to put that.

4 Q Where is that located?

5 A It's under Park Central in the basement next to

6 Subway right on College Ave.

7 Q So it's right on the Avenue?

8 A Yup.

9 Q Are you familiar with an establishment called Luna?

10 A Yeah.

11 Q Have you been there in the past?

12 A Yeah. For one of their dry nights that they had.

13 Q Now, is Sharks close to the Luna location?

14 A It's on the same block, it's probably like three

15 businesses over, two or three.

16 Q So it's pretty close?

17 A Yeah.

18 Q I want to direct your attention to December 8th,

19 2013, the night of December 7th going into the early

20 morning hours of December 8th. Do you know where you

21 were that night?

22 A I was down at Sharks.

23 Q Who were you there with?

24 A A bunch of friends.

25 Q At around 12:15, 12:30, around that time, did you

1 hear about anything that happened down at Luna?

2 A Someone came in saying that there was cops all over  
3 the place. I didn't know exactly what happened until  
4 later on when Sharks made us stay there until we got  
5 the okay to leave.

6 Q Now, I said 12:15, but I mean 2:15. Was it close to  
7 bar close when you heard that something happened at  
8 Luna?

9 A Yeah. I got down there at about 1 -- it was about 1,  
10 1:30 when I got to Sharks.

11 Q So approximately what time do you think you heard  
12 that something was happening at Luna?

13 A I honestly couldn't even tell you. I don't  
14 remember.

15 Q Okay. Now, while you were at Sharks at some point  
16 did you see an Asian male walk into the  
17 establishment?

18 A Yes.

19 Q Do you see him in the courtroom today?

20 A Yes.

21 Q Is he sitting at the table to my left?

22 A Yes.

23 Q Now, when you saw him walk into -- just for the  
24 record, he's already been identified, could you point  
25 out a color of clothing he's wearing, the color shirt



1 he's wearing?

2 A Maroon.

3 ATTORNEY DUROS: I'll ask that the record  
4 reflect identification.

5 THE COURT: The record shall so reflect.

6 Q (BY ATTORNEY DUROS) What entrance did you see the  
7 Asian male come into the establishment?

8 A I saw him come in the front, so from College Ave.  
9 then he walked down the stairs.

10 Q Were you downstairs or were you upstairs?

11 A I was downstairs at the time. I was standing close  
12 to the bar.

13 Q Do you remember what he was wearing that night?

14 A It was like a gray sweatshirt, I think it was like a  
15 darker gray sweatshirt, jeans, white T underneath.

16 Q Was he wearing a winter coat?

17 A No.

18 Q Just a sweatshirt?

19 A Yeah.

20 Q Do you remember what he looked like, for example,  
21 anything on his face, any facial hair?

22 A He did have some facial hair. I don't exactly  
23 remember exactly how it was, but I know he had facial  
24 hair.

25 Q Okay. That's fine.

1                   Prior to that date, had you ever seen that --  
2                   the defendant before?

3       A       No.

4       Q       You didn't know who he was?

5       A       No.

6       Q       At some point in the night, specifically around bar  
7                   close, did you decide to go home?

8       A       Once Sharks said that we could leave, he asked me if  
9                   I could bring him to his mom's house down the street,  
10                  and it was cold out so I said yeah.

11      Q       Were you talking to him before I asked you that?

12      A       No, not really. I was just standing in the hall with  
13                  a group of friends that were there.

14      Q       So he just walked up to you randomly and said can you  
15                  give me a ride home?

16      A       Pretty much, yeah.

17      Q       At around approximately what time did he ask you to  
18                  give him a ride home, if you remember?

19                  Let me ask you this. Was it close to bar close?

20      A       Yeah.

21      Q       What time is bar close?

22      A       I think it was two that night.

23      Q       Okay. Could it have been 2:30?

24      A       It could have been. It could be between 2 and 2:30.

25                  I don't really remember.

1 Q Were you with anyone when the defendant came up and  
2 asked for a ride home?

3 A I was with a lot of people, but Talisa was the main  
4 one.

5 Q What's her last name?

6 A Talisa Farias.

7 Q Were you planning on giving her a ride home as  
8 well?

9 A Yeah. She came down there with me.

10 Q When the defendant asked for a ride home, how do you  
11 respond?

12 A I said yeah.

13 Q That was fine with you.

14 A Yeah. I drive a lot of people home so it wasn't a  
15 big deal.

16 Q Did he tell you where he wanted to be dropped off?

17 A He just said his mom's house at that time.

18 Q Did he give you an address or did he just tell you  
19 where to go?

20 A No, he just told me where to go.

21 Q At that point did you exit Sharks?

22 A Yeah. We went up into the alley, so the back of  
23 Sharks.

24 Q Where was your car located at that time?

25 A Parked right -- I don't know what the building is

1           called but it was parked right behind pretty much  
2           Sharks, right in that back alley.

3     Q     So you, Talisa and the defendant got into your  
4           vehicle?

5     A     Yup.

6     Q     Where was everybody sitting?

7     A     I was driving, Talisa was passenger, and then he was  
8           sitting passenger side in the back seat.

9     Q     Okay. And again, you started driving and he gave you  
10          directions on where he wanted you to go?

11    A     Yup.

12    Q     Do you remember where he told you to go?

13    A     I think it was down Division Street. I couldn't tell  
14          you what street we ended up on.

15    Q     Was he telling you take a left, take a right?

16    A     Yeah.

17    Q     Things like that?

18    A     Yeah.

19    Q     Did you eventually get to the place where he wanted  
20          to be dropped off?

21    A     Yeah.

22    Q     Did he get out of the car?

23    A     Yeah. He got out right away.

24    Q     Did you see him do anything when he got out of the  
25          car?

1     A     He walked up to the house and he was like leaning  
2           over the garbage cans that were like in front of --  
3           I'm pretty sure it was a door, and I just left after  
4           that. I didn't see if he went in or anything. I  
5           just left.

6     Q     Was -- was he acting weird or suspiciously at all to  
7           you?

8     A     Not to me.

9     Q     What about when he was out by the garbage cans, did  
10          you -- what were you thinking?

11    A     I was wondering if he was trying to get in the house,  
12          because I think there was two garbage cans, if I can  
13          remember. The two garbage cans were in front of the  
14          door to get into the garage, and it looked like he  
15          was just trying to open the door. So --

16    Q     At some point did you and Talisa then leave?

17    A     Yeah.

18    Q     Now, I want to take you back to Sharks just for a  
19          second. Did you have any conversation with the  
20          defendant while you were at Sharks?

21    A     I honestly don't remember.

22    Q     Do you remember telling police that you -- you did  
23          have some conversation with him while at Sharks,  
24          specifically about what happened at Luna?

25    A     The only thing that -- I don't think it was him that

1           told me that somebody got shot at Luna, I think  
2           somebody else told me. He didn't really say anything  
3           at all the whole time.

4     Q     Do you remember writing a -- a witness statement in  
5           this case when you were at the police department?

6     A     Yes.

7     Q     If I showed you that statement, do you think that  
8           could refresh your memory?

9     A     Maybe. Hopefully.

10    Q     I'm handing you what was just marked as Exhibit 116.  
11           Do you recognize that?

12    A     Yeah.

13    Q     Is your name on that document?

14    A     Yup.

15    Q     Is that the statement that you wrote when you went to  
16           the police department to tell them about what you saw  
17           that night?

18    A     Yeah.

19    Q     Is that a yes? Does that appear to be your  
20           handwriting?

21    A     Yeah.

22    Q     And your signature?

23    A     Yup.

24    Q     If you could, just to refresh your recollection,  
25           could you read the first four or five lines

1 specifically to see if that refreshes your memory on  
2 whether you said anything about what the defendant  
3 said to you?

4 A Oh. (Witness complying.)

5 Q Before that, did -- does that refresh your memory?

6 A A little bit, yeah.

7 Q So on that -- on that night, what did you tell the  
8 police what the defendant said to you?

9 A That he said that someone was shot at Luna.

10 Q Did he indicate to you that someone was shot or that  
11 someone was shot in the head?

12 A I'm pretty sure that it was just somebody got shot.  
13 I don't know.

14 Q Can I show you this again to refresh your memory?

15 A Yeah. He said some guy shot someone in the head is  
16 what it says.

17 Q You didn't talk to police that night, is that  
18 correct, on the night of the shooting?

19 A No.

20 Q When did you eventually go into the police  
21 department?

22 A I saw his picture in the newspaper and went in pretty  
23 much right after that.

24 Q So when you saw his picture, you realized that that's  
25 the person who you drove home on the night of that

1 shooting?

2 A Yup.

3 Q When you dropped him off at a location in Appleton,  
4 approximately how long did it take you to get from  
5 Sharks to that location?

6 A Maybe like --

7 Q If you remember.

8 A -- five minutes. It wasn't that far away.

9 Q When you wrote this statement at the police  
10 department, you included everything that you  
11 remembered about that night; is that correct?

12 A Yeah.

13 Q Do you remember what day you went to the police  
14 department?

15 A The next day, so what was that, the 8th? Or was it  
16 the 9th. I don't remember.

17 Q Do you remember if it was December 13th of 2013?

18 A I guess. Sure. I don't know.

19 Q Now when you wrote the statement, you signed it,  
20 correct?

21 ATTORNEY WEITZ: Your Honor, we would  
22 stipulate that it's the 13th.

23 THE WITNESS: Okay.

24 ATTORNEY DUROS: I have nothing further.

25 THE COURT: Attorney Weitz?



1 ATTORNEY WEITZ: Thank you.

2 **EXAMINATION OF MARISSA ANN EMENECKER**

3 **BY ATTORNEY WEITZ:**

4 Q So, Miss Emenecker, on the night of December 7th  
5 going into the 8th, you and your friend Talisa were  
6 hanging out at Sharks and you were only at Sharks  
7 that night, right?

8 A Yup.

9 Q Okay. And when you're at Sharks, there's a guy that  
10 comes up to you and asks you for a ride home,  
11 right?

12 A Um-hum.

13 Q And he said that he wanted to go to his mom's house,  
14 that was the plan as far as where you were going to  
15 take him?

16 A Yeah.

17 Q And you had never met this guy before, so this is the  
18 first time you've seen him, right?

19 A Yes.

20 Q As far as what you remember and what you told the  
21 police, you believed that he was wearing a gray  
22 sweatshirt or a hoodie that zipped up, right?

23 A Yeah.

24 Q But it's also possible that could have been like a  
25 lighter type jacket?

1 A I'm pretty positive that it was gray, just --

2 Q I understand the color, I'm just talking about the  
3 weight of -- let me put it this way. It's not a big  
4 puffy, like, down winter jacket, right?

5 A No. It's just a regular hoodie. It wasn't like  
6 super baggy, it was kind of tighter.

7 Q Sure.

8 A So --

9 Q So something that's of a thinner material, not a  
10 heavy down jacket?

11 A Yeah.

12 Q And it looked pretty plain, there was no writing or  
13 designs on it?

14 A No.

15 Q And underneath that you said that he was wearing a  
16 white t-shirt?

17 A Yeah.

18 Q And you believe that he had some -- some facial hair,  
19 right?

20 A Yeah.

21 Q Okay. And the reason that you came in to the police  
22 department is because you saw a photo on the news,  
23 correct?

24 A Yup.

25 Q And you saw that photo in relation to a story about

1 the Luna shooting?

2 A Um-hum.

3 Q And you thought that that may have been the same guy  
4 that you gave the ride to?

5 A I'm pretty positive that it was him. I remembered  
6 from that night.

7 Q Well, initially you weren't sure and you actually  
8 contacted your friend about whether it was the same  
9 guy, right?

10 A She actually sent me the picture, Talisa sent me the  
11 picture and I said, yeah, that's him.

12 Q So you guys had a conversation --

13 A Yeah.

14 Q -- in regards -- okay. And actually when you're  
15 talking to the police officers at some point you told  
16 them that you were pretty sure but all Asians kind of  
17 look alike to you?

18 A Yeah.

19 Q Which is not necessarily a bad thing, just certain  
20 facial features and things like that --

21 A Yeah.

22 Q -- are harder for you to distinguish.

23 A I --

24 Q So at this point, by the time you come in and you  
25 talk to the police, you had already seen this on the

1 news, right, you had read an article about it?

2 A Yup.

3 Q Okay. So you knew a lot of the details about the  
4 Luna homicide?

5 A Yeah.

6 Q Okay. And at that point you had already known then  
7 that the victim had been shot in the head because  
8 that was in the news article?

9 A Yeah.

10 Q Okay. When you came in and talked to police, one of  
11 the big things the police wanted you to do is  
12 identify what house you took this person to, right?

13 A Yup.

14 Q But as you are today, you were uncertain about  
15 exactly what street it was?

16 A When I brought the cops to find the house, I was  
17 having issues remembering exactly where it was too,  
18 but then we finally found it so --

19 Q And how long did it take you to find it?

20 A We were driving around for a -- at least an hour  
21 looking for the house. And then I finally spotted it  
22 and knew that it was that house.

23 Q So even then it still took you a while to find this  
24 house?

25 A Yeah. Because I was -- the last time I was probably

1           going to see him and dropped him off. I didn't pay  
2           attention to where I was really going.

3       Q     Okay. And at that time nothing really stood out in  
4           your mind as to I really need to remember this house.

5       A     No.

6       Q     Okay. When you go with the officers to try and  
7           locate the house, how -- how did that play out? Were  
8           you driving with the officer, were you driving  
9           separately?

10      A     No. My mom was actually driving, and I was in the  
11           passenger seat, Talisa was in the back. We were  
12           driving in my car and the cop followed us all around  
13           until I found it.

14      Q     And you said that took you a while. Did you guys  
15           ever have to stop and --

16      A     We pretty much went down every street possible until  
17           it just popped out at me.

18      Q     Okay. And you said that that was about an hour?

19      A     Yeah, about that.

20      Q     Going back to recognizing the person when you came in  
21           to talk to the police after you saw the photo on the  
22           news, they never showed you any photographs to see if  
23           you could pick out that person from like a lineup?

24      A     No.

25      Q     Okay. And in that same vein, going back to what you

1           said earlier, you saw on the news about this  
2           shooting, right? And you knew at that point from the  
3           news that the person at Luna had been shot in the  
4           head, right?

5     A     Yeah.

6     Q     Okay. So when you're at the police department, you  
7           already know all this information, right?

8     A     Yeah.

9     Q     Okay.

10                   ATTORNEY WEITZ: Nothing further. Thank  
11           you.

12                   THE COURT: Mr. Duros, any redirect, sir?

13                   ATTORNEY DUROS: Briefly.

14                   **EXAMINATION OF MARISSA ANN EMENECKER**

15     **BY ATTORNEY DUROS:**

16     Q     You drove with a police officer to find the house; is  
17           that correct?

18     A     Yes.

19     Q     Were you in the same vehicle as the police officer?

20     A     No.

21     Q     Was he following you?

22     A     Yup.

23     Q     Do you remember if that was Officer Nagel?

24     A     I couldn't tell you his name.

25     Q     Okay. But when he took you to find that house, did

1           he tell you where to go?

2     A     I don't think so. I don't remember.

3     Q     So he didn't give you any hints or direction as to  
4           where to go?

5     A     No.

6     Q     No?

7     A     No.

8     Q     You took him to where you remembered dropping the  
9           defendant off that night; is that correct?

10    A     Yeah. We drove up and down every street until I  
11          found it.

12    Q     Now you indicated that you drive everyone home,  
13          right?

14    A     Yup.

15    Q     How old are you right now?

16    A     I'm 22.

17    Q     So back on this date you would have been how old?

18    A     20.

19    Q     Does that mean you -- you weren't drinking that  
20          night?

21    A     Nope.

22    Q     And is that why you tend to or at least tended to be  
23          everyone's driver?

24    A     Yup.

25    Q     When you went in to speak with police, why did you do

1           it? Why did you go in to talk to them?

2     A     Because I --

3                   ATTORNEY WEITZ: Objection, Your Honor.

4                   THE COURT: Approach.

5                   (A bench conference was held.)

6                   THE COURT: I'll allow you to answer the  
7     question. Do you need to -- do you need it read back  
8     to you?

9                   THE WITNESS: Yeah, please.

10                   (Question read back.)

11     A     Because that's the first thing I'm going to do when  
12     I'm involved in something like that. I don't know.

13     Q     So you just had information that you thought they  
14     might want to know?

15     A     Yeah.

16     Q     Is what you wrote what you remember from that  
17     night?

18     A     Most of it, yeah.

19                   ATTORNEY DUROS: I have nothing further.

20                   THE COURT: Attorney Weitz?

21                   ATTORNEY WEITZ: Nothing.

22                   THE COURT: Ladies and gentlemen, any  
23     questions for consideration?

24                   (No response.)

25                   THE COURT: Thank you. You may be excused.



1                   ATTORNEY SCHNEIDER: Judge, just to  
2                   complete the record, I'm going to move 116 in just so  
3                   that we're not missing a number later.

4                   THE COURT: Any objection to the receipt of  
5                   116?

6                   ATTORNEY WEITZ: No.

7                   THE COURT: Actually, can I get -- I  
8                   just -- counsel for one second.

9                   (Bench conference.)

10                  ATTORNEY DUROS: Your Honor, at this time  
11                  the State will call Talisa Farias.

12                  THE COURT: Mr. Duros, will you be  
13                  questioning again, sir?

14                  ATTORNEY DUROS: Yes.

15                  THE COURT: If you would please come to the  
16                  witness stand, remaining standing and the clerk will  
17                  swear you in.

18                  THE CLERK: Please raise your right hand.

19                  (Oath administered to witness.)

20                  THE WITNESS: Yes.

21                  THE CLERK: Please state your full name and  
22                  spell it for the record please.

23                  THE WITNESS: Talisa M. Farias,  
24                  T-A-L-I-S-A.

25                  THE COURT: You may be seated.

1                                    **EXAMINATION OF TALISA M. FARIAS**

2       **BY ATTORNEY DUROS:**

3       Q       Where do you currently live?

4       A       In Little Chute.   1718 Buchanan Ave.

5       Q       If you could, speak up so everybody in the courtroom  
6               can hear you.

7       A       Do you need me to repeat that?

8       Q       Yes, please.

9       A       In Little Chute.   1718 Buchanan Ave.

10                               THE COURT:   And, Miss Farias, if need be,  
11                               that microphone does move.   There you go.

12       Q       (BY ATTORNEY DUROS)   How long have you lived there?

13       A       About two months.

14       Q       Where did you live prior to that Little Chute  
15               address?

16       A       Schaefer Street in Appleton.

17       Q       So you used to live in Appleton?

18       A       Yes.

19       Q       Were you living in Appleton back in late 2013?

20       A       Yes.

21       Q       Back around late or early December 2013, did you tend  
22               to go downtown Appleton every once in a while?

23       A       Yes.

24       Q       Did you go downtown with your friend Marissa  
25               Emenecker every once in a while?

1 A Yes, um-hum.

2 Q I'm going to direct your attention to the night of  
3 December 7th, 2013, into the early morning hours of  
4 December 8th, 2013. Do you remember where you were  
5 that night?

6 A At Sharks.

7 Q Is Sharks a bar?

8 A Yes.

9 Q Were you there with your friends?

10 A Yes.

11 Q Were you there with your friend Melissa Emenecker?

12 A Yes.

13 Q At some point do you remember if an Asian male walked  
14 into Sharks?

15 A Yes.

16 Q What entrance did he walk in?

17 A The one coming down from the street off College Ave.

18 Q So right off College Ave.

19 A Yes.

20 Q Do you recognize the person who walked in as someone  
21 who is in the courtroom today?

22 A Yes.

23 Q Can you describe what color shirt he's wearing for  
24 the record?

25 A Maroon shirt.

1                   ATTORNEY DUROS: I'll ask that the record  
2 reflect identification.

3                   THE COURT: The record shall so reflect.

4     Q     (BY ATTORNEY DUROS) So you said you walked in the  
5 front entrance, meaning the College entrance?

6     A     Um-hum, yes.

7     Q     Into Sharks. Do you remember what he was wearing?

8     A     Jeans and I believe it was like a brown jacket.

9     Q     Do you remember telling police officers that he was  
10 wearing a gray sweatshirt?

11    A     Yeah. Underneath it, I would believe underneath the  
12 coat it was.

13    Q     Okay. Now, when you spoke with officers, do you  
14 remember writing a written statement?

15    A     Yes.

16    Q     In that written statement do you remember writing  
17 down what he wore?

18    A     Yes.

19    Q     And that's what you remembered at the time, right?

20    A     Correct.

21    Q     If I showed you a copy of your written statement,  
22 could that probably refresh your memory as to what  
23 you thought he was wearing that night?

24    A     Yes.

25                   ATTORNEY DUROS: May I approach the

1 clerk?

2 THE COURT: You may.

3 Q (BY ATTORNEY DUROS) I'm handing you what was just  
4 marked as Exhibit 117. Do you recognize that  
5 document?

6 A Yes.

7 Q Is your name on that document?

8 A Yes.

9 Q Is that the written statement that you wrote after  
10 going to the police department?

11 A Yes.

12 Q What date was that drafted? Does it say on there?

13 A December 13th.

14 Q December 13th?

15 A Yes.

16 Q Now, if you could, could you briefly scan that to see  
17 if it refreshes your memory as to what you told  
18 police officers the defendant was wearing that  
19 night?

20 A A gray sweatshirt.

21 Q Does that say anything about a brown jacket?

22 A No.

23 Q So at least on December 13th you told officers he was  
24 wearing just a gray sweatshirt?

25 A Yes.

1 ATTORNEY DUROS: I'll move Exhibit 117.

2 THE COURT: Any objection?

3 ATTORNEY WEITZ: No.

4 THE COURT: 117 shall be received.

5 Q (BY ATTORNEY DUROS) Do you remember when the  
6 defendant entered Sharks, did he go to any specific  
7 place --

8 A Towards --

9 Q -- in the bar?

10 A Yeah. Towards like the back area by like where the  
11 bathrooms are.

12 Q And where were you seated at the time?

13 A Seated right by the bar like with my back towards  
14 that.

15 Q So you saw him walk in and you saw him go back to the  
16 bathrooms?

17 A Yes.

18 Q Did he go in the area of the bathrooms or did you see  
19 him actually go in the bathroom?

20 A The area of the bathroom.

21 Q How long -- to your best estimation, how long was he  
22 back in that area?

23 A 15, 20 minutes.

24 Q So he didn't come out of there for about 15 to 20  
25 minutes?

1 A Correct.

2 Q At some point did the defendant approach you and  
3 Marissa?

4 A Yes.

5 Q Did he tell you anything about what was going on that  
6 night?

7 A Just that there was like stuff happening outside and  
8 that's really all we knew until somebody else  
9 different came downstairs and told us that there was  
10 a shooting at a different bar.

11 Q Had you ever met the defendant before?

12 A No.

13 Q He just randomly walked up to you and started  
14 talking?

15 A Yes.

16 Q At some point did he ask you or Marissa for a ride  
17 home?

18 A Yes.

19 Q At that point did it appear to you that he really  
20 wanted to leave?

21 A Yes.

22 Q Once you got out to the parking lot, do you remember  
23 if the car was in the alley?

24 A In the alley, yes.

25 Q Is that when he directed you to the location where he

1           wanted to get dropped off?

2     A     Yes.

3     Q     Did he tell you whose house that was?

4     A     He told us it was his mother's house.

5     Q     So when you dropped him off and he got out of the  
6           vehicle, did he explain what he was doing at that  
7           time?

8     A     He -- the house was connected to the garage and he  
9           walked up to the garage and we thought there was  
10          maybe like a code number thing to get into the garage  
11          and he kind of stood there. There was a bigger  
12          garbage can outside, and me and Marissa thought like  
13          something's wrong, why would you stand outside, so we  
14          just drove off because we weren't sure what was  
15          really going on.

16    Q     Okay. I want to clarify something.

17    A     Sure.

18    Q     Sharks is a bar, right?

19    A     Yeah. A billiards hall, whatever.

20    Q     Billiards. Is it still called Sharks, do you know?

21    A     I have no idea.

22    Q     You have no idea?

23    A     No clue.

24    Q     Did you have to be 21 to enter the bar?

25    A     I don't believe so, I think you had to be 18.



1 Q You had to be 18. Okay.

2 When you were interviewed by police, that was on  
3 December 13th, right?

4 A Correct.

5 Q Were you in the same room as your friend Marissa when  
6 police were interviewing you?

7 A Not together, no.

8 Q And you just told police exactly what you remembered  
9 about that night?

10 A Yes.

11 ATTORNEY DUROS: I have nothing further.

12 THE COURT: Attorney Weitz?

13 ATTORNEY WEITZ: Thank you, Your Honor.

14 **EXAMINATION OF TALISA M. FARIAS**

15 **BY ATTORNEY WEITZ:**

16 Q I may be pronouncing this way -- is it Farias?

17 A Farias.

18 Q Okay. Miss Farias, you and your friend Marissa were  
19 at Sharks that night, right?

20 A Yes.

21 Q And that was the only place that you guys went on  
22 College Ave. that night?

23 A Correct.

24 Q You weren't at Luna?

25 A No.

1 Q So you're at Sharks and you said that you saw an  
2 Asian guy come in from the College Ave. entrance?

3 A Yes.

4 Q And you said he went to the area of the bathrooms,  
5 right?

6 A Correct.

7 Q You didn't see him go into the bathroom, right?

8 A Correct.

9 Q And at that time you were still having a conversation  
10 with your friend Marissa, right?

11 A Yes.

12 Q And you guys probably had some other friends that you  
13 were talking with?

14 A Correct.

15 Q So your attention wasn't focused on this guy, what  
16 he's doing the whole time, right?

17 A Correct.

18 Q So the 15 to 20 minutes, that's just the next time  
19 you saw him, right?

20 A Correct. Coming from that area.

21 Q Okay. But you don't know what he was doing that  
22 whole time?

23 A Correct.

24 Q And the reason you saw him coming from that area is  
25 because that's when he came up to the bar by you,

1 right?

2 A Correct.

3 Q And you had never met him before so this was the  
4 first time that you saw this --

5 A Correct.

6 Q -- this guy.

7 And the description you gave of this individual,  
8 you said that actually when you talked to the police  
9 it was a gray and brown hooded sweatshirt, right?

10 A Correct.

11 Q So you remember that it was two different colors?

12 A Correct.

13 Q Okay. And there wasn't any sort of crazy pattern or  
14 anything on the sweatshirt, right, it was pretty  
15 plain?

16 A Not that I recall.

17 Q Okay. And the other thing that you recall is that he  
18 did have some facial hair?

19 A Correct.

20 Q Okay. I think specifically you said it was somewhere  
21 on his chin?

22 A Correct.

23 Q Okay. Shortly before you come in to talk to police,  
24 your friend Marissa had sent you a picture from a  
25 news article, right?

1 A Correct.

2 Q Okay. And you guys had a conversation about whether  
3 that might be the same guy?

4 A Correct.

5 Q Okay. And you thought that maybe it was the same  
6 guy, but you weren't a hundred percent sure.

7 A Correct.

8 Q Okay. So you come in and you talk to the police  
9 officer at the police department, right?

10 A Yes.

11 Q And one of the things that they are really focused on  
12 is this house and where -- where you dropped him off  
13 at, right?

14 A Yes.

15 Q They wanted you to identify where that house was?

16 A Yes.

17 Q But you weren't really paying much attention to the  
18 direction that you guys drove that night, right?

19 A Correct.

20 Q Actually, I think you were -- said that you were  
21 texting on your phone kind of as Marissa drove?

22 A Yes.

23 Q So you really don't know the route for certain?

24 A Correct.

25 Q And police show you on like a laptop Google street

1 view --

2 A Yes.

3 Q -- and Google maps, and you guys kind of look through  
4 that for a little while, and you thought that maybe  
5 there was a couple houses that looked like it could  
6 have been the house?

7 A Yes.

8 Q Right? And those were on Brewster and Parkway?

9 A I don't recall the name of the streets, but off of  
10 Wisconsin Ave.

11 Q So there was a few different ones that you thought  
12 maybe --

13 A Could have been, yes.

14 Q -- could have been it.

15 And actually one of them you kind of thought was  
16 -- was the house when you were looking at that  
17 laptop, right?

18 A Yes.

19 Q But that actually when you went and drove past it,  
20 that ended up not being the one?

21 A I don't recall if it was or not.

22 Q Okay. When you went and drove the route, that took  
23 quite a while for you guys to find the house,  
24 right?

25 A I believe so.

1 Q Around an hour?

2 A Yes.

3 Q Okay. When you were at the police department, you  
4 and Marissa weren't interviewed in the same room,  
5 right?

6 A Correct.

7 Q But between those interviews, you guys had an  
8 opportunity to kind of talk to each other --

9 A No.

10 Q -- before?

11 A Yeah.

12 Q Okay. While you were waiting?

13 A Yeah.

14 Q Okay. And the police, when you were at the police  
15 department, they never showed you a lineup of  
16 pictures to see if you recognized --

17 A No.

18 Q -- the person?

19 A No.

20 Q No? Okay.

21 ATTORNEY WEITZ: Nothing further at this  
22 point, Your Honor.

23 THE COURT: Any redirect, Mr. Duros?

24 **EXAMINATION OF TALISA M. FARIAS**

25 **BY ATTORNEY DUROS:**

1 Q You just indicated on cross that the defendant was in  
2 the bathroom area at Sharks for about 15 minutes; is  
3 that right?

4 A Yes.

5 Q Can you describe what's back in the bathroom area?

6 A There's men's and women's bathrooms with a garbage in  
7 between the bathrooms and pool tables like in that  
8 area and like chairs and stuff, like bar stools.

9 Q Okay. So there is a pool table back in the bathroom  
10 area?

11 A Like kind of -- like the bathrooms are here and it's  
12 over this way more.

13 Q Okay. Now is it fair to say that when you were  
14 driving, Melissa (sic) was probably paying more  
15 attention -- Marissa was paying more attention as to  
16 where you were going?

17 A Yes.

18 Q And when you went to the police department you went  
19 there because you thought you could have information  
20 that could help them?

21 A Yes.

22 ATTORNEY DUROS: I have nothing further.

23 THE COURT: Any redirect?

24 ATTORNEY WEITZ: No.

25 THE COURT: Recross. I apologize.

1 Ladies and gentlemen of the jury, any questions  
2 for consideration?

3 (No response.)

4 THE COURT: Thank you. You may be excused.

5 ATTORNEY SCHNEIDER: We probably have about  
6 a 15 to 20 minute witness we thought we would take up  
7 for lunch.

8 ATTORNEY DUROS: The State calls Officer  
9 Nagel.

10 THE CLERK: Please raise your right hand.

11 (Oath administered to witness.)

12 THE WITNESS: I do.

13 THE CLERK: Please state your full name and  
14 spell it for the record please.

15 THE WITNESS: Adam Nagel. Last name is  
16 spelled N-A-G-E-L.

17 THE COURT: Mr. Duros, your witness.

18 ATTORNEY DUROS: Thank you.

19 **EXAMINATION OF ADAM NAGEL**

20 **BY ATTORNEY DUROS:**

21 Q What's your current occupation?

22 A I'm a police officer with the City of Appleton.

23 Q How long have you been a police officer?

24 A Approximately seven years.

25 Q Have you always been with APD?



1 A I have.

2 Q What's your current position?

3 A I'm a school resource officer at Appleton West High  
4 School.

5 Q How long have you held that position?

6 A Approximately a year.

7 Q What was your position back in December of 2013?

8 A I was a patrol officer in downtown -- in the downtown  
9 district working from three p.m. to three a.m.

10 Q In December did you hear about an incident that  
11 occurred at Luna?

12 A I did.

13 Q Specifically a shooting that happened?

14 A I did.

15 Q Were you involved in that investigation at all?

16 A I was.

17 Q Can you describe your duties investigating that  
18 case?

19 A On 12/13 of 2013 at approximately seven p.m. I was  
20 asked to assist in the Appleton Police Department  
21 lobby. One of my supervisors had two people in the  
22 lobby that had seen the person arrested for the  
23 shooting at Luna and believed that they gave him a  
24 ride home.

25 Q From where?

1 A From Sharks Club in downtown Appleton.

2 Q Were you familiar with Sharks?

3 A I am.

4 Q Is it still Sharks?

5 A It is not. It was -- turned into KK Billiards. Now

6 I believe it's closed.

7 Q You're familiar with Luna, I'm guessing?

8 A I am.

9 Q How close is Sharks to Luna?

10 A I'd say approximately a half a block.

11 Q Okay. Officer, I'm going to show you a board with

12 various pictures on it starting with Exhibit 36 going

13 to Exhibit No. 43. Do you see that?

14 A I do.

15 Q And if you need to, you can step off to take a look

16 at what's in those photos, but I want to go through

17 these photos with you just to get a visual of where

18 these locations are. Starting with Exhibit 36, do

19 you recognize that photograph?

20 A I'm just going to stand up so I can see.

21 Q Sure.

22 A Image 36 would be the building where Luna was.

23 Q Does it look like it's in the middle of a

24 construction phase?

25 A It does.

1 Q What roads are surrounding Luna at that point?

2 A West College Avenue goes from east to west and north  
3 of that location is North Division Street.

4 Q When we're looking at the picture, are we looking at  
5 Luna from College Avenue?

6 A Correct. You're looking at Luna from College  
7 Avenue.

8 Q Moving on to Exhibit 37, can you describe what's in  
9 that photograph?

10 A That's the same building, what was Luna, and again on  
11 College Avenue facing north towards Luna.

12 Q Okay. Moving on to Exhibit 38, do you recognize that  
13 photograph?

14 A I do.

15 Q What is that?

16 A That is going to be about the 300 block of West  
17 College Avenue. In this photograph you'll see it's  
18 KK Billiards, which is what Sharks Club used to be,  
19 and then approximately a half block to the west of  
20 that location underneath this overpass would be where  
21 Luna is located.

22 Q So on Exhibit 38, can you almost see Luna from  
23 Sharks?

24 A Yes.

25 Q And could you point that out? You can use this

1 stick.

2 A All right. I'll use this stick I guess. KK  
3 Billiards is here. This is where Sharks Club was.  
4 You see the over passage right here. Right on the  
5 other side of the overpass is where Luna was  
6 located.

7 Q Moving on to Exhibit 39, do you recognize that  
8 picture?

9 A Yes.

10 Q And what is that?

11 A That is going to be the side of Luna in the 100 block  
12 of North Division Street.

13 Q So could you -- on Exhibit 36 could you point out  
14 where Exhibit 39 is depicting?

15 A This would be the area that Exhibit 39 is depicting.  
16 Right here just off the screen is North Division  
17 Street, this would be about the 100 block in this  
18 area.

19 Q So this was the other side of Luna?

20 A Correct.

21 Q Moving to Exhibit 40, does -- is that simply the same  
22 picture as 39, just a little farther back?

23 A Correct.

24 Q And that shows the Luna Lounge or what was formerly  
25 the Luna Lounge?

1 A Correct.

2 Q All right. Moving on to Exhibit 41, can you  
3 describe --

4 A 41 is going to be the west alley just north of West  
5 College Avenue, about the 300 block of the west  
6 alley.

7 Q When you walk down that alley, is there an entrance  
8 to Sharks?

9 A There is. Actually, I show another image, there is  
10 also a parking area back there.

11 Q Now if you go to Exhibit 42, can you describe what's  
12 in that picture?

13 A Exhibit 42 is this image, correct?

14 Q Correct.

15 A This again is going to be about the 100 block of  
16 North Division Street, what was Luna is right here,  
17 the west alley is right in this location here between  
18 the building and the parking ramp.

19 Q And you just mentioned an alley. Can you see the  
20 alley from Exhibit 43?

21 A 43? Yes. This is the alley here. This is the back  
22 entrance for what was Sharks Club. These doors here  
23 open up and they actually go downstairs into the -- I  
24 guess the pool hall.

25 Q So if you wanted to go into Sharks you could go down

1 the alley and enter from where Exhibit 43 has a sign  
2 saying Park Central?

3 A Correct.

4 Q And do these photographs all appear to be accurate  
5 depictions of this area to the best of your  
6 knowledge?

7 A Correct.

8 ATTORNEY DUROS: I'll move for the  
9 admissions of Exhibits 36 through 43?

10 THE COURT: Any objection?

11 ATTORNEY WEITZ: No.

12 THE COURT: 36 through 43 shall be  
13 received.

14 Q (BY ATTORNEY DUROS) When these two individuals came  
15 in to speak with you, did you interview them  
16 together?

17 A No.

18 Q Did you interview them separately?

19 A I did.

20 Q And when they spoke to you, did they indicate that  
21 they gave who they thought was a suspect a ride  
22 home?

23 A They did.

24 Q Did you attempt to find the location where these two  
25 individuals said they dropped the defendant off?

1     A     We did. I had a mother by the name of Tina  
2           VanderLoop, mother of Marissa Emenecker, actually  
3           drive to the location that they believed was where  
4           they dropped him off. Both Talisa and Marissa, I  
5           believe that they drove on North Division Street but  
6           did not know the exact address they had dropped him  
7           off without seeing it.

8     Q     Did you attempt to look at Google maps or anything to  
9           see if that refreshed your memory?

10    A     We did.

11    Q     And ultimately what you decided to do was drive them  
12           out there?

13    A     That's correct.

14    Q     Were they in your vehicle when you drove out there?

15    A     No.

16    Q     Did you follow them?

17    A     I did.

18    Q     So you were in your police vehicle and they were  
19           driving their own vehicle?

20    A     That's correct.

21    Q     Do you remember if it took a long time for them to  
22           find the location?

23    A     I would say, with travel time, ten to fifteen minutes  
24           tops.

25    Q     Tops?

1                   Now if -- did it take them a little bit to  
2                   actually find it though?

3     A     It did take them, yes.

4     Q     So were you going on various roads trying to find  
5            it?

6     A     Yes.

7     Q     If you knew exactly where it was, how long do you  
8            think it would have taken for you and the two girls  
9            to drive there from APD?

10    A     From the police department to the address, between  
11            five and ten minutes.

12    Q     And you indicated you found it with them between 10  
13            and 15?

14    A     Correct.

15    Q     Okay. What address did they ultimately determine was  
16            the place where they dropped off the defendant?

17    A     1739 North Harriman Street.

18    Q     I'm showing you what was previously marked as Exhibit  
19            72. Do you recognize this document?

20    A     I do.

21    Q     Or this exhibit?

22    A     I do.

23    Q     And what is this?

24    A     It is a map of part of Appleton.

25    Q     We were talking about Luna today. Do you see Luna or



1 at least the location of Luna on this map?

2 A That's correct. Luna is located here at the  
3 intersection of West College Avenue and North  
4 Division Street, 344 West College Avenue.

5 Q If you could I'm going to have you circle this with a  
6 red marker and you could just write Luna under it.

7 A Circle building and write Luna?

8 Q Correct.

9 A (Witness complying.)

10 Q And we also talked about Sharks. Do you see the  
11 location of where Sharks was on this exhibit?

12 A I do. Approximately half a block away at 318 West  
13 College Avenue.

14 Q Could you circle it and put Sharks please.

15 A (Witness complying.)

16 Q So they indicated that they drove the defendant from  
17 Sharks back to a location on Harriman Street?

18 A That's correct.

19 Q And what was the address again?

20 A 1739 North Harriman Street.

21 Q When you look at this exhibit, do you see Harriman  
22 Street?

23 A I do.

24 Q And could you point it out with that stick?

25 A So Harriman Street runs here, and this would be I

1           guess one house or two houses south of West Parkway  
2           Boulevard.

3       Q     That's where they indicated they dropped the  
4           defendant off?

5       A     That's correct.

6       Q     Could you circle that location and put the address?  
7           You can just put the number. You don't have to write  
8           Harriman down again.

9       A     Okay. (Witness complying.)

10      Q     Take a seat.

11                 Prior to meeting with these two females, were  
12           you involved in the investigation at all?

13      A     I was not.

14      Q     Was this your only duty as part of this Luna shooting  
15           investigation?

16      A     It was.

17      Q     At the time the girls drove you around to try to find  
18           that address, were you aware or did you know the  
19           address of an individual named Joe Thor?

20      A     No.

21      Q     Okay.

22                     ATTORNEY DUROS: Nothing further.

23                     THE COURT: Defense?

24                     ATTORNEY VISHNY: Thank you, Your Honor.

25                     **EXAMINATION OF ADAM NAGEL**

1     **BY ATTORNEY VISHNY:**

2     Q     You said you're a school resource officer?

3     A     I am.

4     Q     Were you asked to come talk to these two women  
5           because of that, because they were high schoolers?

6     A     No, this was before I was assigned to the school  
7           resource officer unit.

8     Q     So -- but even though you're a school resource  
9           officer right now, you have done other general police  
10          work?

11    A     I have.

12    Q     And does that include interviewing witnesses?

13    A     It does.

14    Q     You've had training in interviewing witnesses?

15    A     I have.

16    Q     And as part of that training, one of the things you  
17          have learned as you did here is to separate  
18          witnesses, right?

19    A     That's correct.

20    Q     And that's so you can get their individual memory.

21    A     That's correct.

22    Q     And you're aware that witnesses can sometimes relate  
23          information that they've read in the newspaper and  
24          then kind of incorporated it to what they think,  
25          right?

1 A Correct.

2 Q And so sometimes a witness may tell you something,  
3 but they actually are remembering something they saw  
4 in the news, right?

5 A That is possible, correct.

6 Q All right. Now, when you interviewed these two  
7 people, they told you they had never met this Asian  
8 male before, right?

9 A That's correct.

10 Q And they told you that the Asian male had on a hooded  
11 sweatshirt, right?

12 A Correct.

13 Q They didn't say anything about a baseball cap,  
14 correct?

15 A I don't believe so.

16 Q They didn't say anything about a vest, right?

17 A Correct.

18 Q And you weren't aware yet that the photographs that  
19 show Mr. Chong Lee in Luna don't show him in a hooded  
20 sweatshirt, right?

21 A I don't -- I guess I don't know that.

22 Q You still don't know that to this day, right?

23 A Yeah.

24 Q So clearly it wasn't something you knew to ask about,  
25 right?

1 A Correct.

2 Q And, you know, you didn't know anything about  
3 descriptions being given to the police, a shooter  
4 either wearing a white puffy coat or white vest,  
5 right?

6 A No.

7 Q And you didn't know anything about descriptions being  
8 given to the police about the shooter running to the  
9 right of Luna and up Division which would be the  
10 opposite direction of Sharks.

11 ATTORNEY SCHNEIDER: Your Honor, I think  
12 I'm going to object as to the clarification of her  
13 question. She's saying "the shooter", so far through  
14 testimony -- maybe we should approach.

15 THE COURT: Please come up.

16 (A bench conference was held.)

17 ATTORNEY VISHNY: Okay.

18 Q (BY ATTORNEY VISHNY) You didn't know anything about  
19 the suspect at that time, about police having had  
20 information that the suspect at that time had run the  
21 opposite direction of Sharks and northbound on  
22 Division Street, right?

23 A Correct.

24 Q Okay. So these were clearly not things you knew to  
25 ask these young women when they came in and talked to

1           you, right?

2       A     Correct.

3       Q     Now, have you been trained in eyewitness  
4           identification procedures?

5       A     I guess I don't know any formal training besides the  
6           academy.

7       Q     Do you know what a photo array is?

8       A     Yes.

9       Q     So why don't you tell the jury what a photo array is.

10      A     A photo array would be a lineup of photographs  
11           usually consisting of six photos that you would show  
12           a witness to help them determine who they had seen, I  
13           guess my best way to explain it.

14      Q     Okay. And a photo array just -- what you do with the  
15           pictures is you get pictures of people who kind of  
16           look alike to see if somebody can really pick someone  
17           out when they don't really know the person, right?

18      A     Correct.

19      Q     So you wouldn't use a photo array with witnesses who  
20           have known each other for a long time because that's  
21           kind of silly?

22      A     That's correct.

23      Q     But when a witness is a stranger to somebody and  
24           identifies them, the photo array can help you figure  
25           out if this is the right person or not.

1 A Correct.

2 Q Or not figure out if it's the right person or not but  
3 if they can identify the right person. Let me --  
4 right?

5 A Yes.

6 Q And there is a very specific way you're supposed to  
7 do that in Wisconsin, where you show the pictures one  
8 at a time to the witness, right?

9 A Correct.

10 Q And the officer who shows them isn't even supposed to  
11 know where the suspect is in the pictures so that we  
12 make sure that nobody's memory is contaminated by a  
13 police officer, right?

14 A Correct.

15 Q And this is an investigative tool that can be used by  
16 the Appleton Police Department, right?

17 A That's correct.

18 Q And so you, although you didn't use it, you at least  
19 had some training and you know how to do that,  
20 correct?

21 A Correct.

22 Q And that wasn't done in this case with these two  
23 young women?

24 A Correct.

25 Q Nobody showed them a photo array to see whether or

1 not they were sure or could make an identification  
2 saying that this is the same person, right?

3 A That's correct.

4 Q And we all know that when you come into a courtroom,  
5 you know, obviously the witness always knows the  
6 accused person sitting at counsel table, right?

7 A I would say generally.

8 ATTORNEY SCHNEIDER: Calls for speculation.  
9 He can testify what he knows, but I don't know that  
10 he can testify as to what other people know.

11 THE COURT: Sustained.

12 Q (BY ATTORNEY VISHNY) Okay. Now, when you  
13 interviewed the -- Marissa Emenecker, I hope I'm  
14 getting that right, she told you that she thought all  
15 Asian people looked alike to her, right?

16 A She did make that statement, correct.

17 Q So her memory wasn't tested by giving her a photo  
18 array of six Asian males of approximately same weight  
19 and height to see if she could make the  
20 identification in a photo array of the same person  
21 she said --

22 A It was not.

23 Q -- that she saw at Luna.

24 Okay. And Miss Emenecker, she never said  
25 anything about this guy going in the area of the



1           bathrooms, that was just Talisa, right?

2     A     That's correct.

3     Q     And she -- both young women told you that they were  
4           talking with other friends at Sharks the whole time,  
5           right?

6     A     I would imagine they were.

7     Q     You don't --

8     A     I guess I don't remember that specifically.

9     Q     Okay. Now, when you talked to them before you went  
10           out on the streets following them in your -- you  
11           followed them in the car, right?

12    A     Correct.

13    Q     Okay. So before you -- and this only took ten to  
14           fifteen minutes, not an hour --

15    A     Correct.

16    Q     -- to find this place, right?

17    A     Correct.

18    Q     So if somebody said it took an hour, that would be an  
19           inaccurate memory of what occurred?

20    A     Correct.

21    Q     And before you did that, you showed them a computer  
22           program to try and pick out the house?

23    A     That's correct.

24    Q     And they looked at a house and they said it looked  
25           like the house, right?

1 A I believe so.

2 Q But that house that they picked out wasn't at 1739  
3 West Harriman, correct?

4 A I guess I'd have to look at that. I'm not sure.

5 Q Would looking at your report refresh your memory?

6 A I imagine it would.

7 Q Okay. Okay. This is Exhibit No. 118. Is this a  
8 copy of your report that you wrote in connection with  
9 this case?

10 A It is.

11 Q Okay. And I'm going to ask you to turn to the last  
12 page. Do you see where you noted bringing a computer  
13 map?

14 A Correct.

15 Q Does that help to refresh your memory that they  
16 determined the address was somewhere off Parkway?

17 A Correct.

18 Q Okay.

19 A That's not exactly what it says.

20 Q Okay. Well, they were trying to locate the address  
21 where they dropped Chong. I want to make sure I get  
22 this right.

23 A Yup. Nope.

24 Q Correct? And then you say you brought a computerized  
25 map?

1 A Correct.

2 Q Okay. And they determined the address was somewhere  
3 off Parkway in the City of Appleton, correct?

4 A Correct.

5 Q And then it was after that when they -- is that  
6 because they saw the house on a tape -- I'm sorry.  
7 This was recorded, correct?

8 A That's correct.

9 Q And was there -- the reason they thought it was a  
10 house because they thought the house was similar and  
11 is that why they thought it was that location?

12 A I guess I couldn't speculate to why they would think  
13 that.

14 Q Okay.

15 A What they thought.

16 Q All right. Is Parkway and Harriman right next to  
17 each other?

18 A They are.

19 Q So they're fairly close but not the same street?

20 A Correct.

21 Q Okay. Now, they also gave a description of the house  
22 as being light blue with a one-car attached garage,  
23 correct?

24 A I believe one of them said it was white and the other  
25 one said it was light blue, correct.

1 Q Okay. So there were two different descriptions by  
2 the two people?

3 A Correct.

4 Q And they described the one car -- Talisa described a  
5 one-car attached garage?

6 A That sounds correct.

7 Q Okay. And one or two steps leading to a front door  
8 with a white awning over that door, correct?

9 A Correct.

10 Q And there's quite a few houses in Appleton that meet  
11 that description, right?

12 A I would say I wouldn't want to speculate to how many  
13 houses have that.

14 Q But certainly more than one?

15 A I would imagine so.

16 Q There is a lot of common architectural styles in  
17 Appleton, aren't there?

18 A I would imagine there are, yes.

19 Q Now, after you located that address with them, you  
20 went back and talked to the owner of the house,  
21 right?

22 A That's correct.

23 Q And at that time you asked to take a look around and  
24 look at the garbage cans, right?

25 A That's correct.

1 Q And area in front of her house?

2 A Correct.

3 Q And you didn't find anything of any importance  
4 related to the case.

5 A That's correct.

6 Q So obviously -- let me ask this. Were you looking  
7 for bullets or guns or anything of that nature?

8 A I was looking for any kind of evidence.

9 Q Okay. And you didn't find any.

10 A No.

11 Q You're familiar with different bullets, right,  
12 different calibers of bullet?

13 A I would say yes.

14 Q And you know what a .22 or a .25 caliber bullet is,  
15 correct?

16 A Correct.

17 Q And that's a very common caliber?

18 A .22 caliber is very common.

19 Q .25s are common too?

20 A I would say they're more of the uncommon.

21 Q Okay. And -- but there are many firearms that use a  
22 .25 caliber bullet?

23 A There are firearms that use them, I would not put the  
24 term of many compared to -- compared to a .22 or a  
25 nine-milliliter.

1 Q .22 or nine millimeters are more common?

2 A Absolutely.

3 Q .25 are less common but they're also available for  
4 sale in the City of Appleton at the gun store,  
5 right?

6 A I don't think I've ever bought a .25.

7 Q You don't use them at the Appleton Police  
8 Department?

9 A I do not.

10 Q Okay. You -- the Appleton Police Department uses a  
11 different caliber?

12 A Correct.

13 Q Okay.

14 (Bench conference.)

15 THE COURT: Ladies and gentlemen, it -- the  
16 -- the questioning may take yet a little while and so  
17 rather than prolong your break, what I think we're  
18 going to do is we will be in recess, get your lunch,  
19 and if you can be back ready at 1:15, we'll be set to  
20 continue with this witness. Okay?

21 Please rise for the jury.

22 (The jury was escorted out of the  
23 courtroom.)

24 THE COURT: All right. And please be  
25 seated.

1           Just briefly, before we recess, during this  
2 morning session we did have two sidebars. The first  
3 sidebar was during the testimony of Miss Emenecker.  
4 There was an objection to the questioning, the court  
5 did give some latitude, overruled the objection.

6           During Officer Nagel's testimony there was a  
7 brief sidebar related to the usage of the term  
8 shooter. Defense counsel agreed to utilize the term  
9 suspect. Other than that I believe those were the  
10 only sidebars that we had.

11           Anything else we need to address briefly,  
12 Attorney Schneider?

13           ATTORNEY SCHNEIDER: No, Judge.

14           THE COURT: Attorney Vishny?

15           ATTORNEY VISHNY: No.

16           THE COURT: Then I will see everybody a  
17 little before one.

18           (Lunch recess.)

19           THE COURT: All rise for the jury please.

20           (The jury was escorted into the courtroom.)

21           THE COURT: Are we ready to continue with  
22 the questioning?

23           ATTORNEY VISHNY: Yes.

24           THE COURT: Very good.

25           **CONTINUED EXAMINATION OF ADAM NAGEL**

1     **BY ATTORNEY VISHNY:**

2     Q     Before the lunch break I was asking you about photo  
3           arrays and how they're -- and whether you're familiar  
4           with them, right?

5     A     Correct.

6     Q     And it's my understanding that when you do a photo  
7           array, you're supposed to get people who look  
8           somewhat alike but obviously they're not identical,  
9           right?

10    A     I would say that's not necessarily true. I mean it's  
11           not really my choice I guess in who I pick out.

12    Q     Okay. If like a person tells you somebody has a  
13           distinguishing characteristic on their face, would  
14           you try to do a photo array of people who all had the  
15           same distinguishing characteristic?

16    A     I would believe so, yes.

17    Q     So if someone told you, well, a person has a tattoo  
18           on their face, you would try and get people with  
19           facial tattoos, correct?

20    A     That's correct.

21    Q     And if one told a person had a mole next to their  
22           nose, you would try to get a photo array of people  
23           with that if you could?

24    A     Yes.

25    Q     Or a scar if you could, correct?



1 A Yes.

2 Q Now, Talisa told you that the person she saw had a  
3 mole on their nose, the guy that they give a ride to,  
4 do you remember that?

5 A I do.

6 Q And it would be hard to get a photo array of somebody  
7 with a mole, right?

8 A On their nose or face?

9 Q On the Asian male with a mole on -- near their nose  
10 or on their face?

11 A I guess I've never tried.

12 Q Okay.

13 ATTORNEY VISHNY: I don't have any further  
14 questions.

15 THE COURT: Any redirect?

16 ATTORNEY DUROS: Briefly.

17 **EXAMINATION OF ADAM NAGEL**

18 **BY ATTORNEY DUROS:**

19 Q When you looked at Google map, did that take quite  
20 some time?

21 A I think it took a few minutes, correct.

22 Q And then you had to drive out there?

23 A Correct.

24 Q So the total process of that, do you think that took  
25 around an hour or something?

1 A Probably about accurate.

2 Q Okay. Now, when these two females came to the police  
3 department, they had already seen a photograph of  
4 Chong Lee; is that correct?

5 A That's correct.

6 Q They saw a photograph of Chong Lee in the news?

7 A That's correct.

8 Q So when they showed up, would it have actually been  
9 bad police practice to have shown them a photo  
10 lineup?

11 A I believe so. Once someone sees the picture, I don't  
12 think that that's something that would be good to  
13 show a photo lineup after the fact.

14 Q They had already identified him, right?

15 A That's correct.

16 Q And the picture that would have been used in the  
17 photo lineup might have been the picture that they  
18 saw.

19 A Correct.

20 Q So that would have actually been suggestive?

21 A Correct.

22 ATTORNEY DUROS: I have nothing further.

23 THE COURT: Recross?

24 **EXAMINATION OF ADAM NAEL**

25 **BY ATTORNEY VISHNY:**

1 Q Well there were other previous pictures of Chong Lee,  
2 right, at the Appleton Police Department?

3 A I don't know that.

4 Q Okay. But you never investigated to see if there  
5 were different pictures, right?

6 A Correct.

7 Q And you're not an expert on police practices, are  
8 you?

9 A I guess I would not consider myself one.

10 Q Okay.

11 ATTORNEY VISHNY: Thank you. Nothing  
12 further.

13 ATTORNEY DUROS: Nothing further.

14 THE COURT: All right. Any questions for  
15 consideration from the jury?

16 If I could have counsel please approach.

17 (Bench conference.)

18 THE COURT: Officer Nagel, do you know what  
19 the general garbage pickup schedule was for the  
20 Harriman Street address?

21 THE WITNESS: I know from my experience  
22 that garbage pickup is done five days a week in the  
23 City of Appleton. I could tell you the amount of  
24 time that was between the incident and the time I  
25 interviewed her was a full five business days.

1 THE COURT: But you don't know the  
2 specifics as to that.

3 THE WITNESS: Not the exact date, no.

4 THE COURT: Does that prompt any follow-up,  
5 Attorney Duros?

6 ATTORNEY DUROS: No.

7 THE COURT: Attorney Vishny?

8 **EXAMINATION OF ADAM NAGEL**

9 **BY ATTORNEY VISHNY:**

10 Q You don't have any clue whether the homeowner had put  
11 their garbage out just before, just after or when in  
12 relationship --

13 A I do not.

14 Q Okay. I was going to finish my sentence though. I'm  
15 sorry. In relationship to the dates, the relevant  
16 dates in this case?

17 A I do not, correct.

18 Q And you never interviewed the homeowner about whether  
19 she wheels the garbage out or waits until it's full  
20 and skips a week here and there?

21 A I did not.

22 THE COURT: Officer Nagel, thank you,  
23 sir.

24 ATTORNEY DUROS: Mr. Maier has the next  
25 witness.

1                   ATTORNEY VISHNY: Excuse me. I want to  
2                   approach please. Or maybe I'll just --

3                   ATTORNEY MAIER: Your Honor, the State's  
4                   next witness is Jim Wall.

5                   THE COURT: Did counsel need to approach  
6                   or --

7                   ATTORNEY VISHNY: No. We're good. It was  
8                   just a technical thing that we straightened out.

9                   THE COURT: Okay. Got it.

10                  ATTORNEY MAIER: He'll be right up.

11                  THE COURT: And, sir, if you would please  
12                  come to the witness stand, remain standing and the  
13                  clerk will swear you in.

14                  (Oath administered to witness.)

15                  THE WITNESS: I do.

16                  THE CLERK: Please state your full name and  
17                  spell it for the record please.

18                  THE WITNESS: Jim Wall, J-I-M, W-A-L-L.

19                  THE COURT: And, Mr. Maier, your witness,  
20                  sir.

21                                   **EXAMINATION OF JAMES WALL**

22                   **BY ATTORNEY MAIER:**

23           Q       Mr. Wall, how are you employed?

24           A       With the Outagamie County Sheriff's Department.

25           Q       And you're a deputy sheriff with that department?

1 A Correct.

2 Q How long have you worked as a deputy with the  
3 Outagamie County Sheriff's Department?

4 A Approximately seven years.

5 Q Are you assigned to a particular unit or division  
6 within the sheriff's department?

7 A Yes.

8 Q Can you describe what that is and explain what your  
9 roles are?

10 A It is a joint unit with the Appleton Police  
11 Department. We do drugs, gangs, prostitution, any  
12 violent crimes in the area.

13 Q And it's a unit that's called a Community Resource  
14 Unit?

15 A Correct.

16 Q You're one of two sheriff's investigators assigned to  
17 that unit, correct?

18 A Yes.

19 Q Along with four Appleton investigators?

20 A Yes.

21 Q Were you assigned in your role with that unit to  
22 assist in a search for evidence related to a shooting  
23 that had happened at the Luna Lounge in December of  
24 2013?

25 A Yes, I was.

1 Q Specifically where did you conduct your search?

2 A Sharks pool hall on College Avenue.

3 Q Were you working alone or was there someone with  
4 you?

5 A There was someone with me.

6 Q Can you describe what you did when you were searching  
7 for evidence at Sharks pool hall?

8 A We were advised of evidence that might have been  
9 disposed of there, contacted the owner of Sharks  
10 Club; but prior to going there, Lieutenant Elliott,  
11 who was the supervisor of our unit at the time, was  
12 advised that some ammunition was found a day or so  
13 prior to us going there.

14 Q So you and another investigator go to Sharks. Who do  
15 you meet with?

16 A Met with Mitch Roepcke who is I believe the owner at  
17 the time.

18 Q And was there an effort made to see down and I guess  
19 through the toilet to determine if any evidence was  
20 disposed of in a toilet in the men's room?

21 A Yes.

22 Q Did they find anything?

23 A Yes.

24 Q What was found?

25 A I believe it was two rounds of .25 auto that were

1 found in the toilet.

2 Q And did you also search the -- the rest of the pool  
3 hall given the additional information you had that  
4 the staff there may have found some ammunition?

5 A Yes.

6 Q And what did you find?

7 A Found in the garbage behind the bar, which was  
8 consistent with what they had told Lieutenant  
9 Elliott, was a plastic bag that was folded up that  
10 contained four more of the similar rounds.

11 Q Okay. Deputy, I'm going to show you a board with six  
12 photos on it, and these are Exhibits 45 through 50.  
13 Just starting with the upper left, are you able to  
14 identify what that image depicts?

15 A Yes.

16 Q What is that?

17 A More or less that's looking -- from the College  
18 Avenue entrance it would be looking due north through  
19 the length of Sharks pool hall.

20 Q Okay. And so -- let me just make sure I'm clear on  
21 this. If you come down the steps from College Avenue  
22 into Sharks, that's more or less where you walk in,  
23 that's what you would see?

24 A Yeah.

25 Q Yes?



1 A Yes. Sorry.

2 Q Exhibit 46, can you tell the jury what that is  
3 please. That's the upper right?

4 A That is the bathrooms on the north end of Sharks pool  
5 hall. So this image would be way in the back right  
6 corner.

7 Q So the back right corner of 45 is what we would see  
8 when we get to where we can see what 46 shows?

9 A Yes.

10 Q Exhibit 47, which is the middle left, can you tell  
11 the jury what that is?

12 A That is looking in the men's bathroom, which I  
13 believe is one of those two doors, I don't remember  
14 if it's the left or right one, I think it's the left  
15 one.

16 Q Okay. And then 48, the middle right, what does that  
17 depict?

18 A Just once you're in the door of the same picture  
19 here.

20 Q Looking at 48 there appear to be a couple areas  
21 typical for a men's room that would be used. There's  
22 two urinals. How many toilets are there in that  
23 picture?

24 A Just one.

25 Q And is that how many there are in that bathroom?

1 A Yes.

2 Q Exhibit 49, which is the lower left, what does that  
3 depict?

4 A That one toilet.

5 Q And then 50 in the lower right?

6 A Same toilet just closer.

7 Q Closer. Okay.

8 ATTORNEY MAIER: At this point I'd move in  
9 45 through 50.

10 THE COURT: Any objection?

11 ATTORNEY WEITZ: No.

12 THE COURT: 45 through 50 will be received.

13 Q (BY ATTORNEY MAIER) Deputy, I'm going to show you  
14 another board with six photos that's been marked as  
15 Exhibits 51 through 56. 51 is the upper right -- I'm  
16 sorry, upper left. Could you tell the jury what that  
17 photo depicts please?

18 A That was the unfolded bag of the ammunition that was  
19 discarded by the employee that was taken by myself  
20 out of the trash can behind the bar.

21 Q Okay. And 52 is the upper right. Can you tell the  
22 jury what that is please?

23 A Same bag, just different view from the different  
24 side.

25 Q Right. Now in 52, looking at image -- or Exhibit 52,

1 are you able to tell where that bag was located at  
2 the time the photo was taken?

3 A On a pool table.

4 Q On a pool table?

5 A Yeah.

6 Q Exhibit 53, middle left, could you tell the jury what  
7 that is please?

8 A Same bag, just appears maybe a different angle.

9 Q Now, 51, 52, 53 are the bag that you took out of the  
10 garbage. Is that what those bullets and that bag  
11 looked like that day?

12 A Yes. Like I said, they were just unfolded when they  
13 took the pictures.

14 ATTORNEY MAIER: Okay. I would move in 51,  
15 52 and 53 at this time.

16 THE COURT: Any objection?

17 ATTORNEY WEITZ: No.

18 Q (BY ATTORNEY MAIER) Exhibit 54 is the middle right.  
19 Can you tell the jury what that is please?

20 A Those are the two bullets that Officer Medina  
21 recovered from the toilet.

22 Q So there were two rounds recovered from the toilet?

23 A Correct.

24 Q And they were then placed on the same pool table as  
25 the bag with the four you found?

1 A Yes.

2 Q Bottom left is 55. Can you tell the jury what that  
3 is please?

4 A It's just comparison of the two different ammunitions  
5 that were located.

6 Q Okay. To your recollection, was there any difference  
7 in the six rounds -- six unfired rounds that were  
8 found at Sharks pool hall?

9 A They appeared to be similar in both caliber and  
10 size.

11 Q Okay. 56 is the lower right. Can you tell the jury  
12 what that is please?

13 A That's a close-up of the rear of the cartridge, one  
14 of the two bullets found in the toilet by Officer  
15 Medina.

16 Q You have some familiarity with firearms and  
17 ammunition, correct?

18 A Correct.

19 Q Is it true it's fairly common to place the caliber of  
20 the particular cartridge on the -- the primer end of  
21 the casing?

22 A Yeah.

23 Q And were you able to see from the cartridges that  
24 were recovered at Sharks if that had been done, if  
25 the caliber was imprinted on the casing?

1 A Yes, it appeared so.

2 Q And what was it?

3 A .25 auto.

4 Q There are also some other markings commonly put on  
5 the primer end of the casing, correct?

6 A Yes.

7 Q Maybe a manufacturer logo or a stamp, something like  
8 that, right?

9 A Yes.

10 Q Was there one on the cartridges that were recovered  
11 from Sharks that day?

12 A Yes.

13 Q And what was that marking?

14 A FC.

15 ATTORNEY MAIER: I'd move in Exhibits 54,  
16 55 and 56 at this time.

17 THE COURT: Any objection?

18 ATTORNEY WEITZ: No.

19 THE COURT: 54 through 56 will be received  
20 as well.

21 Q (BY ATTORNEY MAIER) Deputy, I'm going to show you  
22 what has been marked as Exhibit 80. Could you take a  
23 look at that and let me know if you are familiar with  
24 the contents?

25 A Yes.

1 Q What are those individual packages that make up  
2 Exhibit 80?

3 A These are the four separated rounds from the garbage  
4 that were recovered.

5 Q And they're packaged by the Appleton Police  
6 Department, correct?

7 A Correct.

8 ATTORNEY MAIER: I'd move in Exhibit 80 at  
9 this time.

10 THE COURT: Any objection?

11 ATTORNEY WEITZ: No.

12 THE COURT: 80 will be received.

13 Q (BY ATTORNEY MAIER) Exhibit 81, are you able to tell  
14 what those items are please?

15 A The two separate casings that were found in the  
16 toilet.

17 Q Again, those are packaged by the Appleton Police  
18 Department?

19 A Yes.

20 ATTORNEY MAIER: Move in Exhibit 81.

21 THE COURT: Any objection?

22 ATTORNEY WEITZ: No.

23 THE COURT: 81 will be received.

24 Q (BY ATTORNEY MAIER) Deputy Wall, you're aware that  
25 at the scene of the shooting at Luna officers found a

1           -- a casing, a fired -- part of a fired cartridge  
2           from a gun, correct?

3     A     Correct.

4     Q     Have you had a chance to look at it?

5     A     Yes.

6     Q     I'm showing you -- I'm sorry. This is Exhibit 82.

7                     ATTORNEY WEITZ: 82?

8                     ATTORNEY MAIER: 82.

9     Q     (BY ATTORNEY MAIER) Can you tell the jury what that  
10           is, Deputy?

11    A     That is a spent casing.

12    Q     Is there a -- to your knowledge is that consistent  
13           with the appearance of the casing that was recovered  
14           from Luna Lounge the night of the shooting --

15    A     Yes.

16    Q     -- based on the information you've received from  
17           other investigators?

18    A     Yes.

19    Q     If you look at the primer end of that casing, are you  
20           able to make out, excuse me, any markings related to  
21           the caliber that that cartridge or that casing  
22           contained?

23    A     Yes.

24    Q     What is that?

25    A     It appears to be a .25 auto.

1 Q And are there any other markings on the primer end of  
2 the casing, something like a manufacturer's mark or  
3 something else?

4 A It appears so, yeah.

5 Q And what is that?

6 A It's very faint but I think it's JC.

7 Q Could be it FC?

8 A Yeah. It could be.

9 ATTORNEY MAIER: Thank you. I would move  
10 in Exhibit 82 at this time.

11 THE COURT: Any objection?

12 ATTORNEY MAIER: No.

13 THE COURT: 82 will be received.

14 Q (BY ATTORNEY MAIER) The -- do you know specifically  
15 how it was that the two -- I'll say the two loose  
16 rounds for the bathroom, do you know specifically  
17 where they were located or how they were  
18 discovered?

19 A They were in the toilet bowl. I believe when we went  
20 there, the intention was to see if there was anything  
21 else in the toilet, and when Officer Medina and I  
22 think the plumber were in there, they located those  
23 two in the bowl.

24 Q The -- the individual who ran the snake, you were  
25 present when that was done?



1 A Nope, I was still dealing with the bartender at that  
2 time.

3 Q Okay. Are you aware of any subsequent searches that  
4 were done between I'll say the toilet and the sewer  
5 end of things?

6 A I guess I don't understand that.

7 Q Okay. You were there with Officer Medina, and you  
8 recovered -- you recovered bullets from the waste  
9 basket, Officer Medina and the other individual  
10 recovered the two loose bullets from the toilet. Are  
11 you aware of any searching that was done past the  
12 toilet end towards the city sewer?

13 A Yes.

14 Q And are you aware of whether anything of, I'll say  
15 evidentiary value, any firearms or ammunition or  
16 anything like that was recovered from that search?

17 A No.

18 Q It was not?

19 A There was nothing recovered. Sorry.

20 ATTORNEY MAIER: That's all the questions I  
21 have for you, Deputy. Thank you.

22 THE COURT: Attorney Weitz.

23 ATTORNEY WEITZ: Thank you.

24 **EXAMINATION OF JAMES WALL**

25 **BY ATTORNEY WEITZ:**

1 Q Deputy Wall, the reason that you went to Sharks Club,  
2 you had received information that a handgun had  
3 possibly been flushed down the toilet, correct?

4 A I don't believe it was that specific, no.

5 Q Okay. You're just going to look for evidence?

6 A Correct.

7 Q All right. So it was you and Officer Medina,  
8 right?

9 A Yes.

10 Q And there was also arrangements made for an Appleton  
11 plumber to meet you guys there?

12 A Yes.

13 Q And he was the one that was working with Officer  
14 Medina in analyzing the toilet and that type of  
15 stuff, right?

16 A Correct.

17 Q Okay. And actually, I believe he borrowed or used  
18 Appleton Police Department snake camera, right?

19 A He might have, yes.

20 Q Okay. You weren't involved in that?

21 A No, he had -- he had a bunch of his equipment. I  
22 don't know what they ultimately used.

23 Q Okay. You became aware of that though, right, that  
24 there was an attempt to look in all the drain  
25 lines?

1 A Correct.

2 Q Okay. And nothing was found in those, right?

3 A Other than the loose rounds, no.

4 Q Okay. And as far as the loose rounds that were found  
5 by Officer Medina, those were actually found when the  
6 plumber took the toilet apart and laid it on its  
7 side, right?

8 A I believe so.

9 Q Okay. So they weren't just sitting in the bowl, it  
10 wasn't until the toilet was taken apart that they  
11 were found?

12 A Correct. It's when the toilet came off is when they  
13 were located.

14 Q Okay. While at the pool hall, you were the one that  
15 recovered the plastic bag with the four cartridges,  
16 right?

17 A Yes.

18 Q And those were actually previously found by the owner  
19 of Sharks, Mitch Roepcke?

20 A Yes.

21 Q And he directed you guys where to find them because  
22 the Sharks' employees were the ones that placed them  
23 in the garbage?

24 A Yes.

25 Q Okay. And those cartridges were found the prior

1 evening, that would have been December 11th?

2 A I believe that's the date.

3 Q Okay. While at Sharks, you and officer Medina did a  
4 more systematic search of the pool hall even looking  
5 in the dumpster and alleys and areas around the pool  
6 hall, right?

7 A Correct.

8 Q And you didn't find anything else --

9 A No, we did not.

10 Q -- of evidentiary value.

11 And in fact you also came back later on the 16th  
12 of December to search again and again nothing was  
13 located?

14 A Correct.

15 Q And that -- at that occasion, you also, in addition  
16 to searching around the area, you checked the  
17 overhang above the sidewalk, right?

18 A I believe so, yes.

19 Q Okay. And again, nothing found.

20 A Correct.

21 ATTORNEY WEITZ: Nothing further, Your  
22 Honor. Thank you.

23 THE COURT: Any redirect, sir?

24 ATTORNEY MAIER: No. Thank you.

25 THE COURT: Ladies and gentlemen of the

1 jury, any questions for consideration?

2 And if counsel could approach.

3 (Bench conference.)

4 THE COURT: Question for you is were the  
5 rounds found in the plastic bag or placed there by  
6 someone?

7 THE WITNESS: They were found and then  
8 placed in the plastic bag before being thrown in the  
9 garbage. From my understanding they were found  
10 loose, placed in the plastic bag from the toilet and  
11 then thrown in the garbage.

12 THE COURT: Does that prompt any follow-up  
13 questions, Attorney Maier?

14 ATTORNEY MAIER: Yes.

15 **EXAMINATION OF JAMES WALL**

16 **BY ATTORNEY MAIER:**

17 Q Found by staff and placed in the bag, not found by  
18 you and placed in the bag?

19 A Correct. Found by staff.

20 ATTORNEY MAIER: That's all I have.

21 THE COURT: Attorney Weitz?

22 ATTORNEY WEITZ: Nothing, Your Honor.

23 THE COURT: All right. Thank you, sir.

24 You may be excused.

25 All right. Fine.

1           I apologize. In my timing, I see we're almost  
2           at two. I've got to take care of something that's  
3           going to take about five minutes. I will let --  
4           we'll have the jury go back to the jury room. We  
5           should be back in just about five or so minutes as  
6           soon as I'm done.

7                       (The jury was escorted out of the  
8           courtroom.)

9                       THE COURT: Be seated. Just a couple  
10          housekeeping, and then I'll be on my way.

11          I forgot to mention there was a -- a question  
12          during the early morning session on the sidebar  
13          related to the smell of the gun powder. I did not  
14          allow that question to be answered.

15          Subsequently there was a sidebar related to  
16          Deputy Wall's testimony -- I'm sorry, there was a --  
17          a sidebar during Officer Nagler's question related to  
18          the garbage pickup. It was allowed as modified.

19          There was also a question related to the  
20          significance of the house which was referenced by  
21          Miss Emenecker. The court did not allow that  
22          question to be asked.

23          Finally, there was questions just asked related  
24          to fingerprints. The court did not allow that  
25          question; and then, additionally, there was a

1 question pertaining to whether or not the casings  
2 were the same as found in Mr. Richards, and I did not  
3 allow that question to be asked. For confusion  
4 purposes.

5 Is that a fair summary of the sidebars we've  
6 had, Attorney Schneider?

7 ATTORNEY SCHNEIDER: Yes.

8 THE COURT: Attorney Weitz, Attorney  
9 Vishny?

10 ATTORNEY WEITZ: Yes.

11 THE COURT: I'll be back in just a few  
12 moments.

13 (Court in recess.)

14 (The jury was escorted into the courtroom.)

15 THE COURT: All right. And then the jury  
16 may be seated and the gallery.

17 And, Mr. Lee, if you'll remain standing, we'll  
18 swear you in just briefly.

19 THE CLERK: Please raise your right hand.  
20 There you go.

21 (Oath administered to witness.)

22 THE WITNESS: Yes.

23 THE CLERK: Please state your full name and  
24 spell it for the record please.

25 THE WITNESS: My full name is Paur Lee,

1 P-A-U-R, L-E-E.

2 THE COURT: Mr. Lee, you may be seated,  
3 sir.

4 Attorney Schneider.

5 **EXAMINATION OF PAUR LEE**

6 **BY ATTORNEY SCHNEIDER:**

7 Q Your first name is Paur, P-A-U-R?

8 A Yes.

9 Q Do you also go by Paul?

10 A That's what everybody calls me by, yes.

11 Q Okay. May I call you Paul or do you prefer Paur?

12 A It's up to you. Doesn't matter.

13 Q Okay. Mr. Lee, how old are you?

14 A As of now I'm 27.

15 Q And were you born and raised here in Appleton?

16 A Yes.

17 Q Do you have any brothers or sisters?

18 A Yes, I do.

19 Q Both brothers and sisters?

20 A Yup.

21 Q How many brothers do you have?

22 A Four brothers and three sisters.

23 ATTORNEY VISHNY: Judge, I'm going to ask  
24 that the witness please speak into the microphone.

25 THE COURT: I was just going to ask that.



1                   Mr. Lee, if can you pull the microphone closer  
2                   to you it will help everyone.

3     A     Four brothers and three sisters.

4     Q     Thank you. Is one of your brothers named Chong?

5     A     Yes.

6     Q     Is he here in the room today?

7     A     Yes.

8                   ATTORNEY SCHNEIDER: Your Honor, I'd ask  
9                   the record to reflect identification.

10                  THE COURT: Can you describe him by an  
11                  article of clothing that he's wearing?

12                  THE WITNESS: He's in a maroon flannel.

13                  THE COURT: Record shall reflect the  
14                  identification.

15     Q     (BY ATTORNEY SCHNEIDER) Paul, back in 2013, where  
16                  were you living in December of that year?

17     A     In Menasha.

18     Q     Were you living with relatives?

19     A     My mom.

20     Q     At some point did you ever live with your sister  
21                  Xeng?

22     A     Yes.

23     Q     And Xeng also goes by the name Mou?

24     A     Yes.

25     Q     Who else lived with you when you were living with

1           your sister Xeng?

2     A     My sister's boyfriend Michael.

3     Q     And his last name is Xiong?

4     A     Yes.

5     Q     And at that time, Mr. Lee, were you working?

6     A     Yes, I was.

7     Q     Where were you working?

8     A     Norka.

9     Q     And was that a full-time job?

10    A     Temporary.

11    Q     I want to ask you about some names, Mr. Lee, just to  
12           help us understand. Do you know someone named Joe  
13           Thor?

14    A     Yes, I do.

15    Q     And how do you know Joe?

16    A     Childhood friend.

17    Q     Is he older, younger or about the same age?

18    A     Same age.

19    Q     What about someone named Phong Lee?

20    A     Childhood friend.

21    Q     Older, younger?

22    A     Same.

23    Q     And what about Tou Shoua Lee, do you know that  
24           person?

25    A     Yes.

1 Q And how do you know Tou Shoua?

2 A Another childhood friend, cousin.

3 Q Is Tou Shoua older or younger than you?

4 A Younger.

5 Q One of your brother's name's Hu?

6 A Yes.

7 Q And is Hu older than you? Actually, this might even

8 be better, Mr. Lee. Among the brothers, where do you

9 fall in line?

10 A I'm the youngest brother.

11 Q Okay. That's what I had thought. So Hu is a

12 brother?

13 A Yes.

14 Q Chong is?

15 A Yes.

16 Q Nhia spelled N-H-I-A?

17 A Yes.

18 Q And then your final brother is?

19 A Tong.

20 Q Do you know someone named Teng Lee?

21 A Yes, I do.

22 Q And how do you know Teng?

23 A That's Phong's younger brother.

24 Q Do you know a man named Xung Xiong, first name is

25 X-U-N-G?

1 A Yes, that's my cousin.

2 Q Older or younger than you?

3 A Older.

4 Q What about a woman named Stephanie Thao?

5 A Yes.

6 Q And how do you know Miss Thao?

7 A Friend.

8 Q And what about Melanie Thao?

9 A Yes.

10 Q Friend also?

11 A Yup. Sister of Stephanie's.

12 Q Do you know someone named Tom Lee?

13 A Yes.

14 Q And how do you know him?

15 A My cousin.

16 Q Do you know someone named Xai Thao who lives in

17 Milwaukee?

18 A No.

19 Q What about someone who's named by Kong Vang, they

20 call him Jesus, he lives in Milwaukee?

21 A You said Jesus, yes.

22 Q You know him by his nickname?

23 A Yes.

24 Q Do you know a Peter Moua who lives in Milwaukee

25 now?

1 A Peter Moua who lives in Milwaukee, no.

2 Q Mr. Lee, I want to direct your attention to what  
3 would have been a Saturday night, Saturday, December  
4 7th of 2013. Did you have plans to go out that  
5 night?

6 A On what night?

7 Q Saturday, December 7th of 2013?

8 A I don't remember that night.

9 Q Okay. Mr. Lee, do you remember a night when you were  
10 at Luna -- Luna Lounge in Appleton?

11 A There was many times.

12 Q Okay. Do you remember an evening when the police  
13 wanted -- that the police spoke to you about?

14 A Oh, yeah. Okay. That. Yes.

15 Q So you might not remember the exact date, but do you  
16 remember a Saturday in December a few years ago being  
17 out at Luna, downtown Appleton?

18 A Yes.

19 Q And that's the night the officers spoke to you  
20 about?

21 A I guess, yes.

22 Q Okay. Maybe if I say it this way. We're going to  
23 talk about a man whose name was Josh. Do you know  
24 who I'm referring to when I say that?

25 A Okay. Yes, I do.

1 Q Okay. So I want to talk about that night, Mr. Lee.

2 I know you might not remember the exact date. That  
3 night, before -- and the first time you ever had any  
4 contact with Josh was at Luna Lounge?

5 A Yes.

6 Q Never saw him before?

7 A No.

8 Q So I want to back up a little bit. Before you were  
9 at Luna, where had you been earlier that night?

10 A Earlier that night I was at another bar near my mom's  
11 house in Menasha.

12 Q Do you remember the bar name?

13 A City Limits.

14 Q Do you remember, Mr. Lee, who was with you?

15 A Not entirely.

16 Q Do you remember some of them people?

17 A Yes.

18 Q Who?

19 A Joe, Phong and Xung.

20 Q And that's Xung Xiong?

21 A Yes.

22 Q Do you remember any girls being out with you guys?

23 A Not that I can recall.

24 Q Do you remember Chong being at City Limits?

25 A Didn't see him at the time.

1 Q Where did you go after you were at City Limits?

2 A After City Limits my -- me and my friends, Phong,  
3 Joe, for us to go to downtown so we went downtown.

4 Q Where did you go first?

5 A I believe we went to Luna, or I don't know, or Sharks  
6 maybe.

7 Q And Sharks is a place where you can go and play pool,  
8 right?

9 A Yes.

10 Q So you think you might have went to Sharks first?

11 A Yes.

12 Q Who was with you at Sharks, if you recall?

13 A At the time it was just me, Phong and Joe.

14 Q Do you remember seeing Chong there at all?

15 A No.

16 Q Do you remember seeing Tom Lee there?

17 A Yes.

18 Q What about Michael Thor?

19 A Not until I was in Luna.

20 Q Okay. How did you get from City Limits to downtown  
21 Appleton?

22 A If I can remember, might have -- could have been  
23 Michael Thor was the one that drove us there, but I'm  
24 not too sure.

25 Q Were you driving?

1 A No.

2 Q Do you remember some girls being with you that  
3 night?

4 A No.

5 Q If I tell you the name -- because I apologize, these  
6 are names I did not say earlier, Mr. Lee, Alyson  
7 Blom, or Alyson Kristy Blom? Do you know that  
8 woman?

9 A Who?

10 Q Alyson Blom or Alyson -- sometimes she goes by Alyson  
11 Kristy, she lives in Milwaukee now?

12 A Oh, yes. I know her.

13 Q Do you remember seeing Alyson that night?

14 A No.

15 Q So if she was out, she -- if she was out that night  
16 at Luna, she wasn't hanging out by you?

17 A No, not that I can remember.

18 Q Okay. She wasn't hanging out by Joe or Phong?

19 A I didn't remember -- I don't remember seeing her at  
20 all that night.

21 Q Do you know a girl named Dalinda?

22 A One of Alyson's friends, yes.

23 Q You answered my next question. Do you remember  
24 seeing Dalinda out that night?

25 A No.



1 Q So if Dalinda was out at Luna, it wasn't somebody you  
2 were hanging out with.

3 A No.

4 Q Mr. Lee, this seems like an odd question but I got to  
5 ask it. When you were at Luna, were you out on the  
6 dance floor dancing or were you by the bar or both?

7 A We were everywhere.

8 Q Okay.

9 A By the dance floor, outside smoking, bathroom,  
10 everywhere.

11 Q Was it a situation back then where you could not  
12 smoke inside the bars in Luna, correct?

13 A Yes.

14 Q Okay. You couldn't smoke inside any bars in Appleton  
15 at that time?

16 A Yes.

17 Q Did you smoke like traditional cigarettes at that  
18 time or did you smoke something else?

19 A Both traditional and e-cigarettes.

20 Q And did you have your own e-cigarettes on that night  
21 when you went out?

22 A Yes.

23 Q Mr. Lee, why don't you stand up. These are photos,  
24 they're marked No. 32, that's why they're 32A and  
25 then letters.

1                   Looking at the picture 32D, do you recognize  
2                   who's in that photograph?

3       A       No.

4       Q       Okay. 32E, do you recognize who's in that  
5                   photograph?

6       A       No.

7       Q       32F?

8       A       No, not really. It's blurry.

9       Q       Hard to see? What about down here, 32J, the person  
10                  walking in the door?

11      A       That's me.

12      Q       That's you? So if I remove this post-it and it says  
13                  Paul there, that would be you?

14      A       Yes.

15      Q       But the other ones, you can't really make them out?

16      A       No.

17      Q       I'm kind of going to skip around a little bit, Mr.  
18                  Lee.

19                  I'm going to show you a photo board marked 33.  
20                  Okay? Down here in 33J, doesn't look like a J but  
21                  it's supposed to be a J, do you recognize anyone in  
22                  that photograph? And if you need to step down and  
23                  take a look, please do.

24      A       (Witness indicating.)

25      Q       And you pointed to a person kind of in the middle.

1           Why don't you put -- I'm going to give you a green  
2           marker, Mr. Lee, if you can just put your name  
3           underneath yourself please.

4     A     (Witness complying.)

5     Q     Thank you. Recognize anyone in 33K?

6     A     Me.

7     Q     Okay. Same picture, again, you kind of have a hood  
8           on the back of your coat; is that correct? I'm  
9           sorry. We went through this. You got to say yes or  
10          no instead of using your head. I'm sorry. I should  
11          have -- that was you with the hood on your coat?

12    A     Yes.

13    Q     And 33K, recognize anyone?

14    A     Yes.

15    Q     Again, kind of still in the middle?

16    A     (Inaudible.)

17                   THE REPORTER: I didn't hear him.

18                   ATTORNEY SCHNEIDER: He said I guess it's  
19           Phong's because Phong's name is on there.

20    Q     (BY ATTORNEY SCHNEIDER) Does it look like Phong?

21    A     I can't really tell, it's blurry. Dark.

22    Q     Okay. You can grab a seat then.

23                   ATTORNEY VISHNY: You're done then, can I  
24           go back to my seat?

25                   ATTORNEY SCHNEIDER: Yes.

1 Q (BY ATTORNEY SCHNEIDER) How -- how well do you know  
2 Alyson?

3 A I know her pretty good but not all that good.

4 Q Okay. How much older -- how much age difference is  
5 between you and Chong?

6 A I would say two, three years.

7 Q Okay. So having a sibling that close in age,  
8 sometimes you all have the same friends, correct?

9 A Yes.

10 Q Okay. Was Alyson someone you knew better or someone  
11 that your brother knew better, Chong?

12 A Probably say Chong because I only knew her but never  
13 really kicked it, hang around with her.

14 Q Would Chong hang out with her?

15 A Maybe more than I did.

16 Q Okay. And Alyson knew Phong?

17 A Yes.

18 Q And she knew you as well?

19 A Yes.

20 Q Did she know Joe Thor?

21 A Yes.

22 Q Okay. Did she know Tom Lee?

23 A Yes.

24 Q Mr. Lee, I want to direct your attention to a time --  
25 and I expect this long having passed you might not

1 know exactly. Do you remember what time you got  
2 downtown Appleton that night?

3 A Not that I remember, no.

4 Q Okay. So you think you went to Sharks for a little  
5 bit and then went to Luna?

6 A We didn't go to Sharks for a little bit. We only --  
7 we went through Sharks to go to Luna maybe.

8 Q Okay. Is it sometimes that you would park in that  
9 ramp or the alley behind Sharks?

10 A Yes.

11 Q Do you remember what the weather was like that  
12 night?

13 A Cool.

14 Q I want to direct your attention now to the time when  
15 you're at Luna and it's close to closing time or bar  
16 time. Do you remember where you were in the bar?

17 A During what?

18 Q It's getting close to closing time. Okay? Do you  
19 remember being in what I want to call -- I'll start  
20 over, Mr. Lee. This might be easier.

21 How do you get to the bathrooms at Luna?

22 A Go down -- gotta go downstairs.

23 Q Okay. So I'm going to direct your attention kind of  
24 to that area where the stairs come up and you're on  
25 the main level. You understand what I'm

1 describing?

2 A Yes.

3 Q Do you remember a time when you were in that area?

4 A When I came back from the bathroom.

5 Q Okay. And who was with you?

6 A Me and Phong.

7 Q Did you see anyone else that you knew in that area at  
8 that time?

9 A Joe was probably to my left.

10 Q What happened when you came up from the bathroom?

11 A I came up from the bathroom and saw a guy sweating my  
12 friend Phong.

13 Q And just to help the jury, you said sweating your  
14 friend Phong?

15 A Yeah.

16 Q So kind of maybe looking at him odd or looking at him  
17 funny?

18 A Talking trash.

19 Q Okay. So are you facing that person then?

20 A Yes, I was.

21 Q So you had just come up from the stairwell and would  
22 be facing kind of away from the stairs looking out?

23 A I don't know what you mean.

24 Q Bad description.

25 ATTORNEY VISHNY: Judge, at this point I'm

1 going to ask that Miss Schneider ask open-ended  
2 questions, not leading questions.

3 THE COURT: Request granted.

4 Q (BY ATTORNEY SCHNEIDER) You were facing the man  
5 named Josh, you previously said that, correct?

6 A After talking to Phong, yes.

7 Q And as you're facing that man, where is Phong, to  
8 your left?

9 A He would be to my right.

10 ATTORNEY VISHNY: Again, objection.  
11 Leading.

12 THE COURT: You can rephrase, Counsel.

13 Q (BY ATTORNEY SCHNEIDER) Where was Phong?

14 A To my right.

15 Q And where was Joe?

16 A Maybe behind me to my left.

17 Q And where was the man you now know whose name was  
18 Josh?

19 A In front of me.

20 Q Do you remember what words -- you used the term  
21 "sweating", but do you remember any words that were  
22 said?

23 A If I can recall, I told him -- he was yelling at  
24 Phong. I told him back up, I don't know who you are,  
25 we don't want trouble.

1 Q What do you remember next, Mr. Lee?

2 A Next I remember he told me to shut fuck -- fuck up  
3 and called me a gook, and I said, okay, now you're  
4 gonna cross the line.

5 Q And I should tell you, Mr. Lee --

6 ATTORNEY VISHNY: I'm going to object to  
7 Miss Schneider's telling him anything if they're  
8 doing anything -- other than asking questions.

9 ATTORNEY SCHNEIDER: If she let's me  
10 finish.

11 Q (BY ATTORNEY SCHNEIDER) If you have to say a swear  
12 word, that's okay if that's literally the word you  
13 remember. I know you kind of paused when you had to  
14 say the word fuck, but if that's what you remember,  
15 please use whatever words it was. Okay?

16 A Yup.

17 Q So after he says these words to you, what do you  
18 remember happening?

19 A I told Phong that he's going to the dance floor, and  
20 then Phong wouldn't go no more, and then he came up  
21 to me, started talking smack, more trash to me, and  
22 then I told him, you know, why don't you just back  
23 up. We don't want no problem. I don't know who the  
24 hell you are so --

25 Q And when you say "he came up to me", you mean the man



1           who we've identified as Josh.

2     A     Yes.

3     Q     Was Phong still to your right?

4     A     Yes.

5     Q     And Joe to your left?

6     A     Yes.

7     Q     What happened then?

8     A     Then me and Josh went face-to-face, had face-to-face  
9           contact, and then he was talking trash and I punched  
10          him.

11    Q     Just to help the jury out, Mr. Lee, was this man  
12          taller than you?

13    A     I don't remember.

14    Q     Okay. After you punched him, do you remember if you  
15          made contact?

16    A     Yes, I -- I knicked him in the chin.

17    Q     What happened then, Mr. Lee?

18    A     And then I backed up, and then 30 seconds everybody  
19          heard a big bang and then I thought he had shot or  
20          something and I ran out.

21    Q     Okay. I'm sorry. You thought he had shot or  
22          something and then you ran?

23    A     He had shot, like pulled a gun on me or something,  
24          and I ran out.

25    Q     You didn't have a gun?

1 A No.

2 Q At that point, I'm just kind of trying to direct you,  
3 you had thrown the punch and you said you backed up.  
4 Where was Joe and Paul at that point, meaning to your  
5 right or to your left?

6 A You mean Phong?

7 Q I'm sorry. Phong and Joe.

8 A Joe was -- I don't know where Joe was at the time,  
9 but I remember Phong was still to my right.

10 Q Were you in front of him or shoulder-to-shoulder?

11 A Yes, we were directly in front of him.

12 Q So you were in front of Phong or were you  
13 side-by-side?

14 A What are you talking about?

15 Q You throw your punch at Josh, you knick his chin, you  
16 said you stepped back?

17 A Yeah.

18 Q Is Phong still to your right?

19 A Yes.

20 Q Were you in -- were you standing closer to Josh than  
21 him or were you and he at kind of equal distance to  
22 Josh?

23 A We were distance after I punched him.

24 Q Okay. And then you said some time passed, and what  
25 do you remember happening?

1 A Maybe like 20 to 30 seconds passed and then we heard  
2 a big loud bang and then I freaked out and we ran  
3 out, and what the fuck happened, I said I don't  
4 know.

5 Q Did it surprise you when you heard the bang?

6 A Yup, because I already heard it once and I got shot  
7 once and, like I said, when you hear a bang you  
8 run.

9 Q Okay. And to you it was very loud.

10 A No. I don't know. Just what people said gunshot and  
11 we all scattered.

12 Q And at that time when you heard the bang, you  
13 believed Phong was still to your right?

14 A Yes.

15 Q Did you see him do anything prior to the bang?

16 A I don't know.

17 Q What about Joe?

18 A Joe was already out the door. He booked.

19 Q Mr. Lee, I'm going to ask you this, and I'm not sure  
20 if you're going to remember or not, you hear the  
21 bang, was Josh still in front of you?

22 A Yes.

23 Q Did you see what happened to him when you -- after  
24 the bang or at the time of the bang?

25 A Not for -- not after the -- after that 30 seconds

1           when we heard the bang, when we already backed up he  
2           fell in front of me, I said, oh, what the fuck, and  
3           then Phong started pushing me outside and I'm like,  
4           what the hell is going on, and then they said  
5           gunshot, and I was like, oh, shit, and I ran out.

6       Q     Okay. And does it -- from the way you describe it,  
7           did you and Phong run out the door together?

8       A     From what other people told me, Phong was pushing me  
9           out the door.

10      Q     Okay. Do you remember where Joe was at that time as  
11           you're going out the door?

12      A     Like I said, when Phong was pushing me out the door,  
13           Joe already booked like probably a block away.

14      Q     Joe much faster than you?

15      A     You could say that, yes.

16      Q     Okay. Back in December of this time he was?

17      A     (Witness nodding.)

18      Q     Do you remember prior to that and hearing the bang  
19           seeing Chong at all?

20      A     No. I didn't see Chong at all that time.

21      Q     Okay. Do you remember when you were at Luna ever  
22           seeing Chong?

23      A     No. I was -- I was around Tom and Phong and Joe and  
24           I'll say outside smoking most of the time.

25      Q     So you were around Tom, Joe and who else did you

1 say?

2 A Phong.

3 Q Phong?

4 A We were outside smoking cigarettes most of the  
5 time.

6 Q Did you even know if Chong was at Luna?

7 A Not that I could recall.

8 Q When you went out that night, did you make specific  
9 plans with him or with the other people you  
10 mentioned?

11 A Other people.

12 Q Because if Alyson had been in town, it wasn't  
13 somebody you would have planned to meet up with or --

14 ATTORNEY VISHNY: Your Honor, object,  
15 leading.

16 A I don't really hang around Alyson. They're just  
17 around.

18 THE COURT: Just, Mr. Lee, next time if  
19 there is an objection, just hold off on your answer  
20 until I make my ruling.

21 Q (BY ATTORNEY SCHNEIDER) So you run out the door.  
22 Did you -- which direction did you turn, if you  
23 remember?

24 A If I remember correctly, the corner street of Luna is  
25 Division. Yeah. Right up Division.

1 Q If I said the Performing Arts Center is at that  
2 corner, does that make sense to you?

3 A Yeah.

4 Q And which direction did you go?

5 A I went up Division.

6 Q As you're going up Division, do you -- do you  
7 remember seeing anybody that you recognize near  
8 you?

9 A Phong was behind me running too. Phong said, go,  
10 just keep going, and I was like, for what.

11 Q Did it surprise you what you had heard?

12 A Yes. After a while Phong told me, yes, I was  
13 surprised. I didn't know what was happening until  
14 then.

15 Q That night did you -- you said you smoked regular  
16 cigarettes. Did you have your e-cigarette with you  
17 too?

18 A Yes, I did.

19 Q Did you -- and Joe's ahead of you as far as you knew  
20 at that time?

21 A Way ahead.

22 Q Okay. Did you ever catch up to him?

23 A Not until we crossed Franklin and passed another  
24 street.

25 Q Do you remember or know what business is on the

1 corner there at Franklin?

2 A Nope.

3 Q Do you know where the post office is in Appleton?

4 A Yes.

5 Q Is that -- did you go near that area?

6 A Yes.

7 Q What do you remember about the weather when you were  
8 running that night away from Luna?

9 A Like I said, it was cold.

10 Q You kept your coat with you?

11 A Yes.

12 Q Do you remember if you had your hands in your pockets  
13 or out of your pockets?

14 A I don't remember.

15 Q Where did you end up going?

16 A Me, Phong, Joe walked to Joe's house.

17 Q Do you know -- and I don't always remember the name,  
18 the addresses of my friends, but I know how to get  
19 there. Do you know Joe's address?

20 A No, I don't.

21 Q Was it like -- well, I'll ask you this, Mr. Lee, if  
22 you can guess, how long do you think it took you to  
23 walk to get to Joe's?

24 A I don't know.

25 Q Was it like two hours, an hour?

1 A I don't know.

2 Q Okay. And when you arrived at Joe's house, was  
3 anyone else there?

4 A No.

5 Q So tell me who -- who was at Joe's house, yourself?

6 A Me, Joe and Phong.

7 Q Did anyone else arrive at the house?

8 A Probably later on Chong maybe arrived.

9 Q Did you know how he got there?

10 A No.

11 Q When you got -- when you first got back to Joe's  
12 house, were you pretty shocked by what had  
13 happened?

14 A I didn't know nothing happened until then, until  
15 later.

16 Q When Chong came to Joe's house, did you go anywhere  
17 specific in the house that you recall?

18 A We were in Joe's basement. Chong had came there and  
19 then me and Phong had left.

20 Q Does Joe's basement kind of get a rec room area or --

21 A I don't know. I was in his room.

22 Q His room is in the basement.

23 A Yes.

24 Q Okay. Sorry, Mr. Lee. I did not know that.

25 When you were down in Joe's room, when Chong is



1           there, did he say anything?

2     A     He said where did everybody go. And I said me, Phong  
3           and Joe walked here. And then me and Phong called a  
4           ride, we got our ride and went home.

5     Q     Did Chong say anything when he was at Joe's, anything  
6           else?

7     A     Nothing much.

8     Q     Okay. Did he say anything about what had happened  
9           back at Luna?

10    A     No.

11    Q     Did he talk about -- when Chong got back to the  
12          house, did you talk about the shooting at all?

13    A     Back to what house?

14    Q     Joe's house.

15    A     No. Chong just said that, oh, I need to go grab my  
16          car.

17    Q     I need to go grab my car?

18    A     Yeah. And then me and Phong already walked out of  
19          Joe's house, went home, and that was it.

20    Q     You and Phong then left from what you're  
21          describing?

22    A     Yes, me and Phong left Joe's house.

23    Q     Mr. Lee, when you were at Joe's house, Chong never  
24          talked about the shooting is what you're telling  
25          me?

1     A     He didn't talk about no shooting whatsoever.  He --  
2           all he said was, oh, I need to go and grab my car.  
3           That was it.

4     Q     And you spoke to officers about this night, right?

5     A     What?

6     Q     Bad question.  Okay?  At some point you spoke to the  
7           police officers about what happened at Luna.

8     A     Yes.

9     Q     Do you remember telling them comments Chong made?

10    A     No.  I don't remember.

11    Q     Okay.  Do you remember telling officers Chong said  
12           he - and I'm going to - fucked up and shot the  
13           dude?

14    A     No, I don't remember saying that.

15    Q     When Chong said he needed to get his car, did he tell  
16           you why?

17    A     No, he just said he needed to get the car, and at the  
18           time me and Phong's ride already arrived so me and  
19           Phong went home.

20    Q     Did Letty Xiong come to give you a ride?

21    A     Yes, that's correct.

22    Q     When's the next time you remember seeing Chong?

23    A     Maybe couple days, maybe like a couple of days after  
24           that night Chong came to the apartment.

25    Q     And on that -- that day after or the day of, because

1           it was early morning hours, would have been a Sunday,  
2           did you have to work on Sundays?

3     A     Sometimes, yes.

4     Q     And as it continued into Monday, Tuesday or  
5           Wednesday, did you continue to have to work?

6     A     Yes.

7     Q     And you continued to go to work, correct?

8     A     Yes.

9     Q     Kept the coat that you had this night?

10    A     Yes.

11                   ATTORNEY VISHNY:  Objection.  Leading.  I  
12           would really ask Miss Schneider to not require me to  
13           make this objection every few questions.

14                   THE COURT:  Please work at keeping the  
15           questions open ended.

16    Q     (BY ATTORNEY SCHNEIDER)  So now it's a few days  
17           later, Chong is at your house or your apartment?

18    A     My sister's apartment.

19    Q     Okay.  And that would be Xeng?

20    A     Yes.

21    Q     Did you talk to him then about the shooting?

22    A     No.

23    Q     You were -- at that point did he ever tell you he had  
24           been at Luna?

25    A     He didn't say nothing much.  He just said what are

1           you doing and I said about to go to work. That was  
2           it.

3       Q     Up to that point, did you know if he had or had not  
4           been at Luna on this night?

5       A     Like I said, I don't know, I didn't see him that  
6           night.

7       Q     So a few days later you're at your house, your  
8           brother comes over, did you talk about the Luna  
9           shooting at all?

10      A     No.

11      Q     Probably, Mr. Lee, something would you say that was  
12           pretty surprising to you?

13      A     What?

14      Q     Being at Luna and having this bang go off, was that  
15           something that was pretty surprising to you?

16      A     Well, you would be if you got shot once, you know.

17      Q     Something pretty significant to you, correct?

18      A     No.

19      Q     Not meaning being there and having a bang go off.

20      A     No.

21      Q     And you never said to Chong, hey, I was at Luna when  
22           the shooting happened?

23      A     Not that I can remember, like I said. I don't  
24           remember much. I already put all this behind me.  
25           Like I said, I moved on.

1 Q Okay. Mr. Lee, do you remember when you spoke with  
2 officers telling them that Chong told you certain  
3 things when he came to your house?

4 A Like I said, I don't remember.

5 Q Okay. Do you remember telling officers that Chong  
6 came to your house and said he fucked up and shot the  
7 guy?

8 A No, I don't remember.

9 Q You -- you spoke to officers about this. You  
10 remember where they came to find you?

11 A I believe it was at Norka, my workplace.

12 Q If I told you it was on a Wednesday, December 11th,  
13 does that sound correct?

14 A I don't know.

15 Q Don't know the date but it was a day you were  
16 working?

17 A Yes.

18 Q What back then -- if you know, Mr. Lee, what hours  
19 did you have to work?

20 A A ten-hour shift, two twelve-hour shift.

21 Q Did anyone else you know normally work your shift  
22 with you?

23 A My brother-in-law Michael.

24 Q And that would be Xeng's --

25 A Yes.

1 Q -- boyfriend?

2 A Yes.

3 Q Do you remember at work meeting with Sergeant Rabas  
4 and Sergeant Thao?

5 A Yes.

6 Q And they asked you -- do you remember what they asked  
7 about?

8 A Yeah.

9 Q Do you remember when they brought up the topic of  
10 Luna what you said?

11 A The what?

12 Q When they talked about a shooting at Luna, did you  
13 tell them if you had been at Luna that night?

14 A Yes, they did.

15 Q And did you tell them you had been at Luna?

16 A Yes.

17 Q And did you tell them who was with you?

18 A Yes.

19 Q And the same people you're telling us here today?

20 A Yes, Joe and Phong.

21 Q And during that interview, Paul, you got upset with  
22 the officers, right?

23 A Yes, because like Officer Thao always does is accuse  
24 my family. Who wouldn't be pissed about it.

25 Q At one point do you remember raising your voice?

1 A Yes, because he raised his voice at me, yeah.

2 Q Do you remember telling them that you were not the  
3 shooter?

4 A Yes, I do remember that. Because I wasn't.

5 Q Do you remember them asking that same thing about Joe  
6 and Phong?

7 A Yes.

8 Q What did you tell them?

9 A That I don't know if they are the shooter, and I  
10 don't -- I didn't see nobody.

11 Q Do you remember telling them at one point that it  
12 wasn't your boys or wasn't who you were with?

13 A Yes.

14 Q Did you tell them about whether or not you had a gun  
15 at Luna?

16 A I didn't have a gun.

17 Q Okay. Do you remember them asking about something  
18 you might have had in your hand?

19 A Yes, I remember them asking me that.

20 Q Did they ever show you any photos of that at any  
21 point when you were talking with the officers?

22 A Not a clear picture.

23 Q Kind of, for better or worse, kind of a little bit  
24 fuzzy like the ones I showed you?

25 A Yes.

1 Q What do you remember having in your hand at Luna?

2 A Could have been my e-cigarette, I don't know, a  
3 bottle, a bottle of Bud Light.

4 Q Did you show them your e-cigarette?

5 A Yes.

6 Q Do you remember, Mr. Lee, when you were speaking with  
7 them, was that something they knew that you smoked  
8 e-cigarettes?

9 A Yes.

10 Q And that was after you told them that you did?

11 A What?

12 Q You brought -- you brought up the subject of  
13 e-cigarettes, do you recall that?

14 A Yeah.

15 Q And then you showed -- you actually showed them your  
16 e-cigarette?

17 A No. They asked me what did I need, and I asked them  
18 could I get my e-cigarette. So they had given me my  
19 e-cigarette to smoke before the interrogation.

20 Q Okay. That was something you had at work maybe in  
21 like a locker or an area where you kept your personal  
22 things?

23 A I always had it with me.

24 Q You can keep it with you on the floor?

25 A Yes, but you couldn't smoke it.



1 Q Okay. And during that time when you spoke to the  
2 officers, they asked you more than once if you were  
3 the shooter?

4 A Yes.

5 Q And every time you said what?

6 A No.

7 Q Did they ask you who was the shooter?

8 A Yes, they did.

9 Q Did you indicate a name to them at all?

10 A I don't know who. No.

11 Q And then at some point did you go to the Appleton  
12 Police Department?

13 A Probably after the interrogation at Norka.

14 Q And when you were at the Appleton Police Department,  
15 do you remember Sergeant Schira?

16 A No.

17 Q Was it the same two people you spoke to at Norka that  
18 you spoke to at the police department?

19 A I don't remember. That was a while back.

20 Q You don't remember who you talked to?

21 A No.

22 Q Do you remember if they asked you again if you were  
23 the shooter?

24 A I don't remember.

25 Q And when you got to the Appleton Police Department,

1           you agreed to speak to them?

2     A     Yes.

3     Q     And I think at some point during that time you were  
4           speaking with them, they had your coat. Do you  
5           remember that?

6     A     Yes.

7     Q     And do you remember them asking you if you knew  
8           anything more about what happened at Luna?

9     A     No.

10    Q     Do you remember talking to them about what happened  
11          at Luna?

12    A     After a long while, yes.

13    Q     Was it hard to talk about what you knew?

14    A     Nothing that I didn't know. Something they forced me  
15          into saying.

16    Q     Mr. Lee, at some point you get asked if Chong was at  
17          Luna. Do you remember that?

18    A     What?

19    Q     At some point do they bring up your brother's name  
20          Chong?

21    A     Yes.

22    Q     Prior to that, had you talked about Chong at all?

23    A     No.

24    Q     Do you remember telling the officers that Chong came  
25          to Joe's, this is when you were at the Appleton

1 Police Department, after you and Joe and Phong had  
2 gotten there?

3 A What?

4 Q Do you remember telling the officers that Chong ended  
5 up at Joe's house on this night after you and Chong  
6 and Phong had been there?

7 A Yes. Like I said, Chong came there, he said he  
8 needed a ride, go grab the car.

9 Q During that time when you were at the Appleton Police  
10 Department, do you remember telling them that Chong  
11 made the comment he fucked up and shot a guy?

12 A I don't remember.

13 Q Do you remember at some point saying to the officers  
14 there was a comment or comment by Chong that he point  
15 blanked him?

16 A Look. I'm gonna plead the fifth. Okay? I don't  
17 remember saying all that. Okay?

18 ATTORNEY SCHNEIDER: We should take a  
19 break.

20 THE COURT: Take a brief recess.

21 Please rise for the jury, Mr. Lee.

22 (The jury was escorted out of the  
23 courtroom.)

24 THE COURT: All right. Please be seated.

25 And, Mr. Lee, you do have your counsel, Attorney

1 Groh, here.

2 ATTORNEY SCHNEIDER: Why don't we -- we can  
3 have Attorney Groh and Mr. Lee go back to where they  
4 were, it's just a little more private, and speak for  
5 a minute or two.

6 THE COURT: That's fine.

7 ATTORNEY SCHNEIDER: Okay.

8 (Court in recess.)

9 THE COURT: All right. Attorney Groh,  
10 you've had a chance to talk to Mr. Lee?

11 ATTORNEY GROH: I have, Your Honor. We  
12 were able to speak for a few minutes, and we've also  
13 spoken before about fifth amendment issues. I think  
14 we're determined that the fifth amendment protections  
15 would not apply at this immediate time.

16 THE COURT: Okay.

17 ATTORNEY GROH: So I believe that -- I  
18 believe my client is willing to continue testifying.

19 THE COURT: Okay. And, Mr. Lee, you have a  
20 better understanding now that you've had a chance to  
21 talk to Mr. --

22 THE WITNESS: Yes.

23 THE COURT: Very good. Then we can -- we  
24 can all rise. We'll bring the jury back in.

25 (The jury was escorted into the courtroom.)

1 THE COURT: All right. Please be seated.

2 And if I recall correctly, Attorney Schneider,  
3 you still had some additional questions, correct?

4 ATTORNEY SCHNEIDER: Thank you.

5 **CONTINUED EXAMINATION OF PAUR LEE**

6 **BY ATTORNEY SCHNEIDER:**

7 Q Mr. Lee, I think the last question I asked you is if  
8 you remembered telling the officers that Chong said  
9 to you I point blanked him.

10 A Like I said, I -- like I said, that was two years ago  
11 or so. I don't really remember.

12 Q If there would be a recording of you saying Chong  
13 told me or said to me I point blanked him, might  
14 there be such a recording?

15 A Like I said, I don't remember.

16 Q Do you remember telling the officers you learned from  
17 Chong more about what he did when he came to visit  
18 your house a few days after the incident?

19 A No.

20 Q Do you remember telling the officers that you felt  
21 like Chong was going to hate you?

22 A No. I don't remember saying none of that.

23 Q Do you remember telling the officers you didn't know  
24 Chong had a gun that night?

25 A What?

1 Q Do you remember telling the officers that you didn't  
2 know Chong had a gun that night?

3 A I don't remember that.

4 Q Do you remember being upset when you were talking to  
5 the officers?

6 A What about?

7 Q Do you remember being upset that you were talking  
8 about what Chong had done?

9 A Only because they forced me to say it.

10 Q You weren't worried about how Chong would feel when  
11 you told what you knew?

12 A No.

13 Q Do you remember telling the officers that you were --  
14 you had been having trouble sleeping since the  
15 incident?

16 A Who wouldn't.

17 Q You remember telling sergeants at the Appleton Police  
18 Department that from the time when the shooting  
19 happened to when you were meeting with them you had  
20 been having trouble sleeping?

21 A And I said who wouldn't.

22 Q Oh, who wouldn't. I'm sorry, Mr. Lee.

23 And that came over days when you continued to  
24 talk to your brother about what happened?

25 A I'm sorry. Can you repeat that?

1 Q The times when you were having trouble sleeping came  
2 after your brother met back up with you at Joe's  
3 house?

4 A I don't remember.

5 Q Okay.

6 A What are you -- what was the question?

7 Q Sure. From the time of the shooting to when you  
8 talked to the officers you said you'd been having  
9 trouble sleeping, and you said who wouldn't, right?

10 A Yes.

11 Q I mean, in essence, Mr. Lee, Paul (sic) got shot  
12 right in front of your eyes -- Josh got shot right in  
13 front of your eyes, correct?

14 A Yes. Not knowing that he was shot but he was.

15 Q But he fell?

16 A Fell.

17 Q Do you remember smelling anything?

18 A No.

19 Q Just do me one favor, Mr. Lee. The court reporter  
20 has to take down everything you say, so sometimes,  
21 even when you know your answer to my question, can  
22 you just wait for me to finish?

23 A Okay.

24 Q Okay. Otherwise she'll start to yell at us or the  
25 judge will.

1 A Okay.

2 Q Do you remember what kind of coat or jacket Chong had  
3 on on this night?

4 A No.

5 Q Do you remember describing it for the officers as a  
6 jacket with darker sleeves?

7 A I don't remember. I don't recall or remember saying  
8 that.

9 Q Do you remember telling the officers that Chong had  
10 told you he was going to run?

11 A He didn't say he was going to run but he said he was  
12 -- he wanted to live with my brother in California.  
13 Yes. I remember that.

14 Q So in the days after this Chong just brought up the  
15 subject that he wanted to go visit your brother in  
16 California?

17 A Yes, because my brother always wanted to go live  
18 there because he owns his own business.

19 Q Which brother is that?

20 A My half brother.

21 Q Okay. Do you remember telling one of the officers at  
22 the Appleton Police Department that you were gonna --  
23 weren't gonna go down for something someone else had  
24 done?

25 A Yes, I remember saying that.



1 Q Do you remember the officers showing you a series of  
2 photographs at the Appleton Police Department?

3 A Not really.

4 Q Do you remember picking Chong out of one of those  
5 photographs?

6 A No. I don't remember.

7 Q Were you bothered by the fact that Paul (sic) had  
8 been shot in front of you?

9 A Why do you keep saying I've been shot?

10 Q I'm sorry. Were you bothered by the fact that Josh  
11 had been shot in front of you?

12 A After I found out that he was shot, yes.

13 Q Did you talk to Sergeant Thao about like Josh's  
14 spirit and how you felt?

15 A No, I never talked about that, but I -- I did tell  
16 him that it's kind of hard to sleep after seeing  
17 somebody, yeah.

18 Q It's even harder when your brother is involved, isn't  
19 it?

20 ATTORNEY VISHNY: Objection.

21 A I don't know. Like I said, I don't know.

22 THE COURT: Sustained. Again, Mr. Lee, if  
23 there is an objection then you don't have to answer  
24 until -- sustained. Question will be stricken.

25 Q (BY ATTORNEY SCHNEIDER) Did Chong talk to you about

1           what he had done with the gun?

2     A     Not that I know of.

3     Q     Don't remember telling the officers that Chong stated  
4           he ditched the gun?

5     A     No. I don't remember saying that.

6     Q     Did you know where Chong had parked his car that  
7           night downtown?

8     A     No. Like I said, I came with somebody else. I  
9           didn't see Chong there that night or remember seeing  
10          him.

11    Q     So if someone had talked about Alyson hanging around  
12          with somebody, it wouldn't have been you?

13    A     No.

14    Q     And it wouldn't have been Phong?

15    A     No.

16    Q     Wouldn't have been --

17                    ATTORNEY VISHNY: Again, objection.  
18           Leading.

19                    THE COURT: Sustained.

20    Q     (BY ATTORNEY SCHNEIDER) Was Alyson by Joe that you  
21          saw at all?

22    A     Not that I recall. I didn't see Alyson or the other  
23          girl there.

24    Q     Mr. Lee, I'm going to show you something closer to  
25          you and then with some technology we have we're going

1 to show it up on the screen.

2 I'm going to show you a drawing, it's marked  
3 Exhibit 123. Your name, Paul, not Paur, but Paul Lee  
4 is here at the top, correct?

5 A Yes.

6 Q Do you remember writing or talking to the officers at  
7 the Appleton Police Department and them making this  
8 drawing based upon what you said?

9 A Kinda, yes.

10 Q And at that time did you tell them what you could  
11 remember?

12 A Just what they wanted me to tell them, yeah. What  
13 they -- the story that they made me say, yeah. I  
14 remember that.

15 Q There were other people in the bar that night,  
16 right?

17 A Yeah, like me, Phong and Joe, yeah.

18 Q And Tom Lee?

19 A Yes, and Tom Lee maybe. And maybe I think Noe.

20 Q Someone, maybe Noah might be his first name?

21 A Yeah. Noah, Noe.

22 Q Call him maybe N-O-E, Noe? What about Tou Shoua?

23 A Tou Shoua, I don't remember Tou Shoua being by me or  
24 near.

25 Q Michael Thor?

1 A Michael Thor, he was in the dance floor.

2 ATTORNEY SCHNEIDER: And, Judge, the  
3 bailiff has been so kind to tell me that sometimes  
4 when we utilize this in the best way, it's shining in  
5 the juror's eyes, so I might have to ask you to turn  
6 the lights off. Just if you don't mind doing that  
7 then I might not have to turn the side lights on.

8 THE COURT: Why don't we err on the side of  
9 caution. Ladies and gentlemen of the jury, if  
10 there's a glare, we'll look at what adjustments we  
11 can make. Everyone okay?

12 (No response.)

13 THE COURT: All right. Excellent.

14 Q (BY ATTORNEY SCHNEIDER) On this diagram, Mr. Lee,  
15 your name is where my finger is pointing, correct?

16 A Yes.

17 Q And this is something you went through with the  
18 Appleton officers when you were at the police  
19 department?

20 A Yes.

21 Q And it's something where you indicated people were  
22 standing at the time; is that correct?

23 A If that's the correct diagram, yes.

24 Q Okay. Pointing to an X, I'm going to zoom in on it,  
25 spin it around actually. You see your name Paul

1           written on this exhibit?

2     A     Yes.

3     Q     And then what would have been to your right, the name  
4           Phong?

5     A     Yes.

6     Q     And is that how you remember Phong standing?

7     A     No. I had told him that Phong was to my right.

8     Q     I understand, and you might be looking at this in the  
9           opposite way. These would indicate the stairs. Does  
10          that make sense to you in terms of the layout of  
11          Luna?

12    A     Yeah, I guess.

13    Q     Okay. Was the -- what was the V for, the victim?

14    A     I don't know what the V is.

15    Q     And then over here there is the name Chong. Do you  
16          see that?

17    A     Not really, not -- not that good of handwriting but  
18          sure.

19    Q     Maybe like a doctor's handwriting, not the  
20          clearest --

21    A     Sure.

22    Q     -- correct?

23                 So when you were describing for sergeants and  
24                 officers where people were in this diagram, you told  
25                 the officers about these facts, right?

1 A Yes.

2 Q And described for them where people were?

3 A Yes.

4 Q And at one point you described that you thought Chong  
5 had come from the bar; isn't that correct?

6 A Yes.

7 ATTORNEY SCHNEIDER: I'd move 123 into  
8 evidence at this time.

9 THE COURT: Any objection?

10 ATTORNEY VISHNY: No.

11 THE COURT: 123 will be received.

12 Q (BY ATTORNEY SCHNEIDER) Mr. Lee --

13 ATTORNEY SCHNEIDER: And I'm going to go  
14 right to another exhibit, Judge.

15 THE COURT: That's fine.

16 Q (BY ATTORNEY SCHNEIDER) I'm going to show you what's  
17 marked Exhibit 122. Do you see that number?

18 A Yes.

19 Q And your name, although it's hard to see the P, Paul  
20 Lee, does that appear at the top, and that's your  
21 address on Kensington?

22 A Yes.

23 Q And this is dated December 12th, 2013; is that  
24 correct?

25 A Yes.

1 Q At 12:30 p.m.; is that correct?

2 A Yes.

3 Q And you signed this, correct, that's your  
4 signature?

5 A Yes, that's my signature.

6 Q Okay. Is this your handwriting in the middle of the  
7 form?

8 A Yes.

9 Q And that's what you wrote at the Appleton Police  
10 Department?

11 A Something Officer Thao wanted me to write, yes.

12 Q He asked you what happened?

13 A Huh?

14 Q Officer Thao asked you what happened?

15 A What tapped it?

16 Q What happened. Sorry, I have a cold. Sergeant Thao  
17 asked you what happened at Luna, right?

18 A Yes.

19 Q And at one point he asked you to write a statement  
20 about what happened.

21 A No. He forced me to say that it was Chong because  
22 Chong's less -- Chong's name was brought up last.

23 Q It's pretty significant to say your brother was  
24 involved in something like this, correct?

25 A Yup, because his name was brought up last and then he

1           tried blaming everything on my brother.

2       Q     Okay. Well I just want to show and have -- I'm going  
3           to read a sentence at a time, Mr. Lee. I'm going to  
4           start here with the first line. See the word while?  
5           Do you see that, Mr. Lee?

6       A     See what?

7       Q     Do you see this word that starts while?

8       A     Yes.

9       Q     So what you wrote here was: While I was in Luna  
10           coming back from the bathroom me and Josh got into an  
11           argument. Those are the first two lines you wrote,  
12           correct?

13      A     Yes.

14      Q     Next line continues: When it got physical, Chong  
15           came from Josh's left side and point blanked Josh.  
16           That's what you wrote, correct?

17      A     Yes.

18      Q     After leaving Luna, me, Joe and Phong walked to  
19           Joe's. That's what you wrote?

20      A     Yes.

21      Q     Roughly an hour later, Chong shows up and told us he  
22           had fucked up and shot Josh. That's what you  
23           wrote?

24      A     Yes.

25      Q     Chong told me, Joe and Phong that he ditched the gun



1           and planned on leaving town. Correct?

2     A     Yes. I maybe wrote that, but I don't remember Chong  
3           saying he ditched the gun though.

4     Q     Okay. Do you remember Chong saying he point blanked  
5           him?

6     A     Like I said, not that I remember. But if I did write  
7           that, maybe.

8     Q     Maybe? Okay.

9     A     Like I said, I'm not sure. I don't remember. I've  
10          already put this all behind my past and I moved on.

11    Q     I know, Mr. Lee, and I do appreciate you coming in  
12          here, but I do have a few more questions.

13                 This is something where you and your other  
14          friends were right in the immediate area when this  
15          happened, correct?

16    A     Yes.

17    Q     Was Sergeant Thao in the room when you wrote that  
18          written statement?

19    A     Not that I remember.

20    Q     So he wasn't there at the time as best you  
21          remember?

22    A     Best I can remember, yes, I don't remember if he was  
23          there or not.

24    Q     Do you remember telling officers at some point that  
25          you didn't want to be known as a snitch?

1 A No, I don't remember saying that.

2 Q Do you remember telling them that Chong was going to  
3 hate you for what you were saying?

4 A Like I said, we already went through that earlier, I  
5 don't remember saying that.

6 Q You don't remember that, Mr. Lee?

7 A Yes, I don't remember that.

8 Q Okay. Do you remember telling officers from where  
9 Phong was he couldn't have reached around you and  
10 shot Josh on the left side of his head?

11 A Like I said, Phong was to my right. That's all I  
12 remember was Phong said he was pushing me out the  
13 door. That was it.

14 Q Mr. Lee, I'm going to show you a couple pictures  
15 starting with 83, 84 and 85. First the top picture  
16 in 83, that's you, correct?

17 A Yes.

18 Q And this is your coat?

19 A Yes.

20 Q And we had earlier seen some pictures where you had  
21 like a hood to your coat?

22 A Yes.

23 Q Okay. Did the officers at the Appleton Police  
24 Department ask you to see your e-cigarette?

25 A Yes.

1 Q Okay. And did you pull it out of your pocket or you  
2 asked --

3 A They already had all my stuff.

4 Q They had it. Okay.

5 A Yes.

6 Q And in this top photograph, Exhibit 83, they ask you  
7 to put it in your hand?

8 A They asked me if they can -- if I can put it in my  
9 hand and we take picture, see if -- to match it with  
10 that picture there -- on there.

11 Q Because you had told you didn't have a gun?

12 A Yes, I did say that.

13 Q You thought maybe an e-cigarette or beer bottle?

14 A Yes, it was one of the two.

15 Q And then picture 84 is you still holding that object  
16 in your right hand?

17 A Yeah, either the bottle or the e-cigarette.

18 Q And then 85 is just kind of a close-up picture of  
19 that e-cigarette?

20 A Yup.

21 Q And that was the one you would have had a few nights  
22 earlier when you were at Luna?

23 A I always had it on me.

24 Q Okay. What I mean by that is you didn't buy a  
25 different one in between or you didn't have two?

1 A No.

2 Q Okay.

3 ATTORNEY SCHNEIDER: I'd move 83 through 85  
4 into evidence.

5 THE COURT: Any objection?

6 ATTORNEY VISHNY: No.

7 THE COURT: 83 to 85 will be received.

8 Q (BY ATTORNEY SCHNEIDER) And after you wrote that  
9 written statement at about 12:30 p.m., where did you  
10 go after you left the Appleton Police Department?

11 A I went to my apartment.

12 Q Do you remember when you left the police department  
13 thanking the officers?

14 A About what?

15 Q Do you remember telling them you could feel better?

16 A Not that I can remember.

17 Q Do you remember crying at any point during the  
18 interview?

19 A No.

20 Q Mr. Lee, do you remember back in -- around this time  
21 did Chong have a Facebook account?

22 A I don't remember him having one, but people say he  
23 did, but I don't know. He was never my friend on  
24 Facebook, but whatever.

25 Q Okay. If I told you he might have had the account

1 Little Lee, would that --

2 A No.

3 Q No? Do you remember after this time when you talked  
4 to the officers Chong making any requests of you or  
5 asking you to do anything about his Facebook  
6 account?

7 A No.

8 Q Okay. After the Luna shooting, in the next few days,  
9 did you go back to Sharks at all?

10 A No.

11 Q Did -- are you aware if Joe ever went back to Sharks  
12 at all?

13 A I don't know. I'm not -- I can't speak for them.

14 Q Okay. Did you still talk to Joe and Phong over the  
15 next few days?

16 A No, not until maybe like three, four months after.

17 Q Okay. Do you remember talking to Chong after he was  
18 here at the Outagamie County Jail?

19 A About what?

20 Q Well, we're going to talk about that. Do you  
21 remember talking to him about what you said to the  
22 police?

23 A No, not that I can remember.

24 Q Do you remember telling him that you told the police  
25 that he was involved?

1 A Not that I can remember.

2 Q Do you remember telling him that you looked at

3 pictures or a video with the police?

4 A No pictures.

5 Q Pictures? Do you remember Chong trying to give you

6 like his password for his account for his Facebook?

7 A Maybe to my sister, but I don't know, not me.

8 Q Okay. During these next few weeks did you talk to

9 Teng?

10 A Teng Lee?

11 Q Yes.

12 A I don't know. I always talk to Teng.

13 Q Okay. So even after this time you always spoke to

14 Teng?

15 A Yes.

16 Q And Teng was Phong's younger brother?

17 A Yes.

18 Q Do you remember talking to Paul about a letter -- or

19 talking to Chong about a letter he wrote you?

20 A No.

21 Q Do you remember getting a letter from Chong after he

22 was in jail?

23 A Yes, about Christmas, yeah.

24 Q Okay. And what did you do with the letter?

25 A Threw it away. That was it. Why?

1 Q Do you remember tearing it up?

2 A No.

3 Q Do you remember talking to Chong about having to come  
4 to court?

5 A No, not that I can remember.

6 Q Do you ever remember talking to Chong and talking  
7 about what you should say if you came to court?

8 A No.

9 Q Mr. Lee, have you ever talked -- I think you said  
10 yes. At some point after Chong was in jail, you  
11 might have talked to him, right?

12 A Maybe here and there, yes.

13 Q Okay. I'm sorry. I couldn't hear the answer.

14 THE COURT: Could you repeat?

15 A Here and there, yes.

16 Q And when you talk to someone who calls from the jail,  
17 you get this like long recording at the beginning of  
18 the call. Do you remember that?

19 A Yes.

20 Q And the recording basically tells you that the call  
21 is being recorded or monitored.

22 A Yes.

23 Q And every time there's a call, that playing comes on.

24 A Yes.

25 Q Okay. So if you would talk to him, you were aware

1 the call was being recorded?

2 A Yes.

3 Q Do you ever remember saying that, you know, you were  
4 concerned or didn't want to say too much because it  
5 was being recorded?

6 ATTORNEY VISHNY: Again, I'm going to  
7 object to leading. And I don't think the question is  
8 does he remember, the question is did this happen,  
9 and if he doesn't remember, she can use what she has  
10 available.

11 THE COURT: Briefly if I could have counsel  
12 approach.

13 (Bench conference.)

14 Q (BY ATTORNEY SCHNEIDER) I'm going to show you, Mr.  
15 Lee, an exhibit that's called Exhibit 124; is that  
16 correct? That's the number on there?

17 A Yes.

18 Q Actually, she marked the one with my notes. I've got  
19 to do this one.

20 And at the top it says it's a jail phone call.  
21 Is there a date listed?

22 A 12/12.

23 Q Of what year?

24 A '13.

25 Q And is there a time listed?



1 A 18:23.

2 Q And --

3 A P.m.

4 Q So that would be 6:23 p.m.?

5 A Sure. Whatever. Yeah.

6 Q I'm going to tell you this is a transcript of a jail

7 phone call and you're referenced in the call. Okay?

8 A Okay.

9 Q Do you remember talking to Chong in Hmong at times?

10 A Like I said, I don't remember.

11 Q Some of this was a long time ago, correct?

12 A Yes, but like I said, I don't remember much about

13 it.

14 Q And again, the date of this transcript is - just got

15 to let it adjust - 12/12/2013; is that correct, Mr.

16 Lee?

17 A What was that?

18 Q The date of this is 12/12/13?

19 A Yes.

20 Q I'm going to kind of go line-by-line. Sometimes we

21 could not make out what was being said, that's why

22 the word -- do you know what the word inaudible

23 means?

24 A Yes.

25 Q Okay. It means you can't understand it.

1                   THE COURT: It's blurred, Attorney  
2           Schneider.

3                   ATTORNEY SCHNEIDER: I've got to get this  
4           down.

5    Q    (BY ATTORNEY SCHNEIDER) The first line represented  
6           by the initials CL would be Chong Lee. Okay? And  
7           you'll be referred to as PL. So the first line we  
8           just have inaudibles; is that right?

9    A    Yes.

10   Q    Next line you say hello, correct?

11   A    Yes.

12   Q    And then Chong says yeah or yeah. Is that what's on  
13           this transcript?

14   A    Yes.

15   Q    Your response, first word is inaudible and then you  
16           say is fucked and shit, correct?

17   A    Yeah.

18   Q    And again, Mr. Lee, I'm just going to walk you  
19           through what the transcript shows.

20               Next line from Chong is, whatever you do, then  
21           you tell me; is that correct?

22   A    I guess, yes.

23   Q    I'm just trying to do this, Mr. Lee, instead of  
24           having you read it so I'll read it to you. Okay?  
25           Then you respond back saying huh? Is that correct?

1 A Yes.

2 Q And the next line Chong says you tell me. Correct?

3 A Yes.

4 Q Again you say huh? Is that correct?

5 A Yes.

6 Q Chong questions, you tell me. Is that correct?

7 A Yes.

8 Q Then you respond, no, before they got me mad, so I  
9 got too angry and I -- and I yelled inaudible.

10 That's what it says the next line is?

11 A Yes.

12 Q Chong responds, what did you say. Correct?

13 A Yes.

14 Q Shift this up just a little bit. We'll let it focus.  
15 I want to read it in two lines at the time.

16 During that time they kept asking if it was you.  
17 I said no, it is not you. They kept saying we have  
18 -- he is the one that is inaudible that was not  
19 caught. That's all. So then I said you were there.  
20 Then they said it was (sic) him. I said, hell, no,  
21 it is not him. Do you remember that?

22 A I don't remember saying all that, but yeah, whatever,  
23 it's on paper, yeah.

24 Q Okay. And then the next line is Chong saying, tell  
25 -- and we can't make out the next word, inaudible, to

1 put money on the phone. I will call back. That's  
2 correct?

3 A Yeah.

4 Q And you respond by saying yes? Is that correct?

5 A Yes.

6 Q Chong says to you, tell him to do it right away. Is  
7 that correct?

8 A Yes.

9 Q You respond by saying yes?

10 A Yes.

11 Q And Chong says, like right away. Correct?

12 A Yes.

13 Q And you say yes.

14 A Yes.

15 Q Correct?

16 Then Chong says, so I can call back. Why did  
17 you say -- say that to them. Is that what Chong  
18 said?

19 A If it's on paper, yes.

20 Q According to this. Okay.

21 And the next line is, fucking the, and then the  
22 call ends; is that correct?

23 A I guess. Whatever's on the paper. I don't remember  
24 though.

25 Q I understand, and we've had transcripts made of these

1 calls, Mr. Lee.

2 ATTORNEY SCHNEIDER: I'd move 124 in at  
3 this time.

4 THE COURT: Any objection?

5 ATTORNEY VISHNY: No.

6 THE COURT: 124 will be received.

7 Is there going to be another exhibit or shall I  
8 turn on the lights?

9 ATTORNEY SCHNEIDER: No. There's three  
10 more phone calls.

11 THE COURT: Okay. So I'll keep the lights  
12 off until I'm directed otherwise.

13 Q (BY ATTORNEY SCHNEIDER) Mr. Lee, I'm going to show  
14 you a transcript of a call, No. 125; is that  
15 correct?

16 A Yes.

17 Q And the date on this call is 12/12/13 again?

18 A Yes.

19 Q At 19:31 p.m.?

20 A Yes.

21 Q So about an hour after that first call?

22 A I guess, yes.

23 Q Okay. And this call starts by Chong saying hello?

24 A Yes.

25 Q You respond yes?

1 A Yes.

2 Q So you took -- you answered the second call when  
3 Chong called?

4 A Not that I remember, but yes.

5 Q Change says, hey, what happened. Is that correct?

6 A Yes.

7 Q Your response was, they said -- they said they  
8 inaudible they caught inaudible. Correct? That's  
9 how you responded?

10 A Yes. Whatever the papers say, yes.

11 Q And then next Chong says you? Asking you like a  
12 question?

13 A Yes.

14 Q You say yes. Is that correct?

15 A Yes.

16 Q Next line Chong says, they said that you said it's  
17 me. Is that what Chong said to you?

18 A Like I said, I don't remember, but whatever the  
19 papers say, just yeah.

20 Q And, Mr. Lee, the difficulty is that when these  
21 conversations are in Hmong, to play them, many people  
22 wouldn't understand them, that's why we had to have  
23 them transcribed, okay? So that's why it's a little  
24 more painful to go line-by-line, but that's why we're  
25 going through this process. Okay?

1 A Okay.

2 Q Do you -- when you would normally talk to Chong, do  
3 you talk in English or Hmong?

4 A Both.

5 Q Okay. Next line for you. You say, no because they,  
6 and then it's inaudible. Correct?

7 A Yes.

8 Q And Chong asks you, what did you say. That's what  
9 the next line reads?

10 A Yes.

11 Q And you say, they fucking kept saying, saying,  
12 saying, and I got angry, I said it isn't anyone, not  
13 us, not you, it is inaudible. Then I got mad. Then  
14 they said if it's no one, then who would it be. I  
15 said I don't fucking know. And then inaudible.  
16 That's how you responded?

17 A Yes.

18 Q Chong's response back is what, correct, according to  
19 the transcript?

20 A Yes.

21 Q And you then say, and then they -- they said ask if  
22 Chong was the one who inaudible. No. Inaudible.  
23 Like heck yeah. Inaudible. That's your response  
24 according to the transcript?

25 A Sure. Yeah.

1 Q And Chong responds back, stupid. Correct?

2 A Yeah.

3 Q And then you say, inaudible, finished saying that  
4 then he kept inaudible. Sound like you're talking  
5 about the interview and when you were talking to the  
6 police?

7 ATTORNEY VISHNY: Now I'm going to object.  
8 If she wants to ask him what it is it's one thing but  
9 not to suggest an answer.

10 THE COURT: Sustained.

11 Q (BY ATTORNEY SCHNEIDER) Do you know what you were  
12 talking about when you were talking to Chong?

13 A Like I said, I don't remember much about this or  
14 whatsoever.

15 Q Okay. And then Chong's response back to you was, as  
16 long as -- as when you just tell them again that it  
17 was not me. That was his response?

18 A Yes.

19 Q And you say huh. Correct?

20 A Yes.

21 Q And he says, as long as you say it is not me, I don't  
22 care, according to the transcript?

23 A Yes.

24 Q The next line, but they already got me. Is that what  
25 you told your brother according to the transcript?



1 A Yes, according to the transcript, but I don't  
2 remember, yes.

3 Q And then he says, they caught, correct?

4 A Yes.

5 Q And you respond what. Is that the next line? Is  
6 that the next line?

7 A Yeah.

8 Q And then Chong says, they caught you on the camera,  
9 correct?

10 A Yes.

11 Q And you respond by saying yes.

12 A I guess, yes.

13 Q Chong says, they actually saw you?

14 A Yes.

15 Q And you respond by saying yes.

16 A Yes.

17 Q Chong's response to you is, but they didn't see me.  
18 Is that what's on the transcript?

19 A Yes.

20 Q And you respond by saying what?

21 A Yes.

22 Q And Chong asks, but how come they didn't see me,  
23 correct?

24 A Yes.

25 Q And you respond, they did not give you the DVD to

1 look at yet. Is that correct?

2 A I guess, yes.

3 Q And Chong says no, correct?

4 A Yes.

5 Q You respond by saying oh. Is that correct?

6 A Yes.

7 Q And Chong then says, you saw the whole thing. Is  
8 that correct?

9 A Yes.

10 Q You respond by saying yes.

11 A Yes.

12 Q He then asks you, how did it look. Correct?

13 A Yes.

14 Q And you respond, when you hit him, then inaudible,  
15 then you see the gun right away inaudible. Is that  
16 how you responded?

17 A According to the transcript, yes.

18 Q And Chong's response back is, I know, they did not  
19 see anyone. Is that correct?

20 A Yes.

21 Q Then you say, but inaudible they gave you. I don't  
22 want to talk a lot because right now they are  
23 recording. Is that your response back?

24 A Yes.

25 Q Chong then says, I know. I need you guys to visit

1 me, uh, uh, on Monday at 6:00 inaudible. Is that how  
2 he responded?

3 A Yes.

4 Q And you ask him, what day?

5 A Yes.

6 Q Chong says, Monday at 6:45. I don't know because I'm  
7 getting moved. Just put money on the phone and I'll  
8 call you guys to visit me. Is that correct?

9 A Yes.

10 Q And then you respond by saying yes. Is that  
11 correct?

12 A Yes.

13 Q I'm going to walk through another section of that  
14 call with you, Mr. Lee. There's a line in here,  
15 Chong saying, you asked Mao if Mao deleted my thing  
16 yet. Do you see that?

17 A Yes.

18 Q Who is Mao?

19 A My sister.

20 Q Do you know what he's referring to?

21 A No.

22 Q And you respond by saying, inaudible don't know. We  
23 don't know what is needed to get in there. Is that  
24 correct?

25 A Yes.

1 Q Then Chong says, the number one. Do you hear me. Is  
2 that correct?

3 A Yes.

4 Q You respond by saying yes. Is that correct?

5 A Yes.

6 Q The next comment from Chong is, the number one, the  
7 letter L, then the O, the V, the E, then the T, the  
8 H, the I, the S, the L, the I, then the F, the E. Is  
9 that how he responded --

10 A Yes.

11 Q -- according to the transcript? And you say,  
12 inaudible the what. Is that correct?

13 A Yes.

14 Q Then Chong responds back saying, love this life. Do  
15 you see that?

16 A Yes.

17 Q Then you respond, the I, the L, the O or the one; is  
18 that correct?

19 A Yes.

20 Q And at this point you're talking with him in Hmong as  
21 best you can recall?

22 A I don't remember.

23 Q Okay.

24 A But yeah.

25 Q You didn't know any password Chong had at the time?

1 A No.

2 Q Then Chong says, the L, the O, the V after the one,  
3 then one, then love then the T, the H. That's what  
4 he said next; is that correct?

5 A Yes.

6 Q And you respond, so the one and the L-O-V-E. Is that  
7 what you said in response?

8 A Yes.

9 Q And he says, yes, it is just my life, just this then  
10 -- or it's just T-H-I-S then L-I-F-E. Is that how he  
11 responded?

12 A Not that I can remember, but yes.

13 Q And then you say, wait, T-H-I-F. Is that how you  
14 responded?

15 A Yeah, whatever that means, but yes.

16 Q And then Chong says, S; is that correct?

17 A Yes.

18 Q And then you say, oh, X. Does it seem like you  
19 didn't understand him --

20 A Yes.

21 Q -- when he was giving you this password? Did you  
22 understand what he was trying to spell out?

23 A I had no idea what the hell he was trying to say or  
24 what the hell this is about, but yeah.

25 Q Okay. And then he says, it is S. Do you remember

1           that's what's on the transcript?

2     A     Yes.

3     Q     And you say, oh, T-H-I-X. Is that what the  
4           transcript says?

5     A     Yes.

6     Q     And he says, S, correct?

7     A     Yes.

8     Q     And you say, yes, like this. Is that what you said  
9           next?

10    A     Yes.

11    Q     And his response was yeah. Is that correct?

12    A     Yes.

13    Q     And you say, oh. Did it take you a while to figure  
14           out what he was trying to spell to you?

15    A     I don't remember none of this, but yeah, whatever --

16           I don't know how that what the hell that was about.

17    Q     Chong then says, then just life, correct?

18    A     Yes.

19    Q     And you say what. Is that correct?

20    A     Yes.

21    Q     And Chong says what. Is that correct?

22    A     Yes.

23    Q     And you say, life like, according to the transcript;  
24           is that correct?

25    A     Yes.

1 Q And he says, life, stupid; is that correct?

2 A Yes.

3 Q And you say oh. Correct?

4 A Yes.

5 Q Next Chong, you know. That's what he said?

6 A Yes.

7 Q Then you say, one what, one day. Is that correct?

8 A Yes.

9 Q Chong says, one then L-O-V-E; is that correct?

10 A Yes.

11 Q You then say, oh, okay. Do you see that reference?

12 A Yes.

13 Q Chong says, read it back. Do you see that reference?

14 A Uh-huh.

15 Q You then say huh; is that correct?

16 A Yes.

17 Q Supposed to be a C there but it said read it back.

18 Do you see that?

19 A Yes.

20 Q You say, I love then life. Is that how you

21 responded?

22 A Yes.

23 Q Chong says, I love life, yeah. Is that the next

24 line?

25 A Yes.

1 Q And you say what. Is that correct?

2 A Yes.

3 Q And Paul says, I love this life. I love this life.

4 That's what it is. Is that what he said back to  
5 you?

6 A Yes.

7 Q And then you say, one love, one love, what. Is that  
8 correct?

9 A Yes.

10 Q Chong says, one then love then this life. Is that  
11 how -- what he said?

12 A Yes.

13 Q And you say oh. Is that correct?

14 A Um-hum.

15 Q And then Chong says, just like in English; is that  
16 correct?

17 A Yes.

18 Q And your response back to him was, just say it in  
19 English; is that correct?

20 A Yes.

21 Q Chong then says, I told you the number one, then the  
22 number one, then the L, the O, the V, then the H, the  
23 HT, then the H-I-S-L-I-F-E. Is that the next line?

24 A Yes.

25 Q And then you say, hold on. Let go get Mao. I can't



1           really hear. Is that correct?

2     A     Yes.

3     Q     And then there is a reference to you say, I can't  
4           really hear at that point. Did you go get Mao  
5           then?

6     A     Yes, I did.

7     Q     And then did Paul and Mao continue to talk, if you  
8           know?

9     A     If who?

10    Q     If Mao -- and I am sorry, Mr. Lee, Mao and Chong  
11           continued to talk?

12    A     Like I said, I don't remember much, but I give her  
13           the phone and I didn't care for that.

14    Q     Do you remember, Mr. Lee, as December led into  
15           January if there were court hearings for Chong?

16    A     No. When?

17    Q     Into January. Do you remember any court hearings  
18           that Chong was having?

19    A     No, not that I can recall.

20    Q     Okay. I'm going to show you a transcript where it  
21           states Exhibit No. 126, correct?

22    A     Yes.

23    Q     And the date of this is January 25th, 2014?

24    A     Yes.

25    Q     At 17:57 p.m.?

1     A     Yes.

2     Q     Which would be like 5:57 or almost 6:00?

3     A     Yes.

4     Q     What's a three-way call when a three-way call is made

5           from the jail phone?

6     A     To call another person.

7     Q     So how does that work?

8     A     You press flash on your phone.

9     Q     Okay. So if I would call you from the jail --

10    A     Yeah.

11    Q     -- and I would want you to do a three-way call, what

12           would you do?

13    A     I would then press the talk button --

14    Q     Okay.

15    A     -- and dial in the phone, wait until they pick up and

16           then press the talk button again.

17    Q     So then I could be talking to you and whoever else

18           you connected --

19    A     Yes.

20    Q     -- into the call?

21    A     Yes.

22    Q     Do you remember ever talking to Chong on calls like

23           that?

24    A     Only when he wanted to talk to his girlfriend,

25           yeah.

1                   ATTORNEY VISHNY: I'm sorry. I couldn't  
2                   hear the answer. Repeat it.

3                   THE WITNESS: Only when he told me to  
4                   three-way his girlfriend, yes.

5       Q       (BY ATTORNEY SCHNEIDER) So there were times when  
6                   Chong called you and then you three-wayed in his  
7                   girlfriend?

8       A       Yes.

9       Q       Were there times where someone else was on the phone  
10                  and then you got three-wayed into the call?

11      A       Not that I can remember.

12      Q       And your brother, one of your brother's names is Hu,  
13                  correct?

14      A       Yes.

15      Q       And it's spelled H-U?

16      A       Yes.

17      Q       Okay. Then I'm referring to that transcript we just  
18                  talked about, January 25th, 2014. The first line of  
19                  this transcript reads, your brother Chong, I know,  
20                  call Jenny, call Jenny to see if she is with Mao and  
21                  them. Is Paul around. Do you see that reference?

22      A       Yes.

23      Q       And Hu's response is, hold on, correct?

24      A       Yes.

25      Q       And then Chong says, call and do a three-way. Call

1 from your cell phone. Is that what the transcript  
2 reads?

3 A Yes.

4 Q Next line we have is your brother Hu saying, here is  
5 Paul. Is that what the transcript reads?

6 A Yes.

7 Q Again this is January 25th, 2014. Chong then says  
8 what. Is that what the transcript shows?

9 A Yes.

10 Q And then Hu says, here's Paul.

11 A Yes.

12 Q Do you remember getting a call from Hu and then he  
13 had three-wayed you in to talk to Chong?

14 A Not that I can remember.

15 Q Chong then says, call three-way then I'll talk. Is  
16 that correct?

17 A Yes.

18 Q And Hu says what. Is that correct?

19 A Yes.

20 Q Chong says, do a three-way, then I will talk,  
21 correct?

22 A Yes.

23 Q Hu says, hold on, correct?

24 A Yes.

25 Q And then you're on the phone, the reference is to

1 Paul. Talk, dude, you are -- you so gay. Is that  
2 what you said?

3 A Yes.

4 Q And Chong says, Paul, Paul?

5 A Yes.

6 Q You respond by saying yes?

7 A Yes.

8 Q This call occurs again, the header is January 25,  
9 2014?

10 A Yes.

11 Q So then on January 25th, you've now -- according to  
12 the transcript you're talking, Chong says, inaudible.  
13 When you arrive you tell them that you -- you were  
14 scared and not sure what to say. Do you see that  
15 reference in the transcript?

16 A Yes.

17 Q Chong then says, and say you were inaudible and that  
18 you just said whatever. Is that what the next line  
19 reads?

20 A Yes.

21 Q And you say yes. Is that what the transcript  
22 shows?

23 A Yes.

24 Q The next line is Chong saying, because inaudible said  
25 that is the only way I could win. Do you see that

1 reference?

2 A Yes.

3 Q And you respond back by saying yes; is that  
4 correct?

5 A Yes.

6 Q Chong next line says, and then they did not talk to  
7 you again; is that correct?

8 A Yes.

9 Q And you respond by saying, they did not talk to me.  
10 They talked mostly to Joe. Inaudible. Is that the  
11 next line?

12 A Yes.

13 Q And Chong responds back by saying, they talked mostly  
14 to Joe only?

15 A Yes.

16 Q You respond by saying yes; is that correct?

17 A Yes.

18 Q He then in the next line asks or makes the comment  
19 where, correct?

20 A Yes.

21 Q And you say, I don't know, after all that shit. Is  
22 that the next line?

23 A Yes.

24 Q I'm sorry. Thank you. And Chong responds back by  
25 saying really, correct?

1 A Yes.

2 Q And you then say yes; is that correct?

3 A Yes.

4 Q And then Chong says, the letter I wrote to you, they  
5 took it; is that correct?

6 A Yes.

7 Q And you respond by saying, I tore it up -- I tore it  
8 and threw it away. Then two days after I ripped it  
9 up and threw it away, when they got here, they  
10 couldn't find it inaudible. They cannot read it  
11 because it's all dirty. Is that what you said?

12 A Yes.

13 Q Was there a time in January when law enforcement came  
14 to your house?

15 A Yes, for the second, yes.

16 Q And they were looking for letters?

17 A Yes.

18 Q And was that when they found a letter you had torn up  
19 in the garbage?

20 A Yes.

21 Q And you thought it was all dirty?

22 A I don't know. Like I said, yeah, nothing much to do  
23 with this, but yes.

24 Q And Chong's response was, okay, that's all I wanted  
25 to say. Correct?

1 A Yes.

2 Q And then you respond by saying, what about the trial  
3 because if inaudible I don't have it so I will take  
4 time. Is that what you said in response?

5 A Yes.

6 Q And Chong says, no, if you don't come then they will  
7 give you one year, no, yes, one year, then -- then  
8 they will inaudible to you. Is that how he  
9 responded?

10 A On the transcript, yeah.

11 Q And then you said oh. Is that the transcript?

12 A Yes.

13 Q His response is, but if you come. That's the next  
14 line?

15 A Yes.

16 Q And you respond by saying?

17 A You want me to come and say that only.

18 Q Is that correct?

19 A Yes.

20 Q And Chong says to you, yes. When you come you just  
21 say that, then what theirs won't match anymore. Is  
22 that what he said back in response?

23 A Yes.

24 Q And you respond by saying yes?

25 A Yes.



1 Q And Chong says, but I don't know what -- what that  
2 jerk inaudible going to say. Is that true?

3 A I don't know if it's true or not, but according to  
4 the transcript, yes.

5 Q And you say, I don't know about them, correct?

6 A Yes.

7 Q And Chong responds, oh, okay. That is it. Is that  
8 correct?

9 A Yes.

10 Q So in that call you specifically asked him about  
11 coming to trial, correct?

12 ATTORNEY VISHNY: I object again. She has  
13 to ask what he meant.

14 ATTORNEY SCHNEIDER: I asked if he talked  
15 about coming to trial. There is a specific  
16 reference. I can read it again if you would like me  
17 to.

18 ATTORNEY VISHNY: Judge, my objection is  
19 leading.

20 THE COURT: Sustained.

21 Q (BY ATTORNEY SCHNEIDER) Did you talk to Chong about  
22 the trial in that call?

23 A Like I said, not that I remember.

24 Q Okay. But you're not disputing that the transcript  
25 may be accurate?

1 A Like I said, I don't know.

2 Q I'm going to show you, Mr. Lee, a call -- sorry.

3 A That's all right.

4 Q A call, Exhibit 127; is that correct?

5 A Yes.

6 Q And the date of this is 1/21/14?

7 A Yes.

8 Q So this is actually a few days before the last call

9 we just listened to?

10 A Okay.

11 Q Or heard about, correct?

12 A Yes.

13 Q And the time 16:18 means like 4:18 p.m.?

14 A Yes. Okay.

15 Q Who is Jenny?

16 A My youngest sister.

17 Q Okay. You have a sister Xeng, correct?

18 A Yes.

19 Q She sometimes goes by Mao?

20 A Yes.

21 Q And Jenny, does Jenny have a nickname?

22 A Yes.

23 Q What's that?

24 A Kounou.

25 Q And the court reporter -- do you know how to spell

1           that?

2     A     Yes.

3     Q     How is that spelled?

4     A     K-O-U-N-O-U.

5     Q     Do you have a sister that's sometimes referred to as  
6           Bao?

7     A     That's my other sister, yes.

8     Q     And that would be B-A-O?

9     A     Yes.

10    Q     If we wrote your name in Hmong, how would you spell  
11          that?

12    A     P-A-O.

13    Q     And how do you spell Chong in Hmong?

14    A     I don't know. I don't know how to spell Hmong.

15    Q     Okay. For this transcript from January 21st, 2014,  
16          first line of that is Chong saying where is he. Do  
17          you see that?

18    A     Yes.

19    Q     And your sister Jenny responds, right there; is that  
20          correct?

21    A     Yes.

22    Q     Chong then says, don't say anything, let me talk to  
23          him. Is that correct?

24    A     Yes.

25    Q     And Jenny's response is okay.

1 A Yes.

2 ATTORNEY SCHNEIDER: And, Judge, I actually  
3 think I did this twice now, I marked the one with my  
4 notes so I'm going to mark the clean copy.

5 THE COURT: Thank you.

6 Q (BY ATTORNEY SCHNEIDER) So we were at the point of  
7 Jenny saying back okay.

8 A Yes.

9 Q And then you say what. Correct?

10 A Yes.

11 Q And Chong says, inaudible fat. Uh, earlier they --  
12 you were home earlier when they came to see your  
13 home. Is that what he says?

14 A Yes.

15 Q Your response, of course, I was inaudible when they  
16 came. Is that correct?

17 A Yes.

18 Q Chong's response, what did they say?

19 A Yes.

20 Q And you respond, according to the transcript?

21 A You're stupid. You keep talking to him about what.

22 Q Is that correct?

23 A Yes.

24 Q Chong responds by saying, I have not talked to  
25 anybody; is that correct?

1 A Yes.

2 Q And you respond, for writing letters; is that  
3 correct?

4 A Yes.

5 Q And on this date, January 21st, 2014, is that when  
6 they came to your house looking for letters?

7 A I don't remember the exact date.

8 Q Okay. But was it -- do you remember what month?

9 A No.

10 Q Okay. And Chong responds, I have not written to  
11 anybody. I wrote, uh, one Christmas letter to Mao  
12 and you guys. Did you get the Christmas letter?

13 A Yes.

14 Q And then you respond back saying, yes, we got the  
15 Christmas letter. Is that correct?

16 A Yes.

17 Q And then Chong says, okay, I wrote one Christmas  
18 letter to you guys and then, um, I wrote one letter  
19 to Stephanie to, um, but then Stephanie sent me only  
20 a picture. And then I wrote one letter to Chee. And  
21 that's it. Whether he -- is that correct to the  
22 transcript? I haven't finished the line. Is that  
23 correct so far?

24 A Yes.

25 Q Who is Chee?

1 A I don't know who Chee is.

2 Q Okay. Chong continues by saying, and then I wrote  
3 to. Is that correct according to this transcript?

4 A Yes.

5 Q And Chong finishes by saying Nhia, correct?

6 A Yes.

7 Q And Nhia is one of your brothers?

8 A My oldest brother, yes.

9 Q And you respond back saying, oh, T's house was first  
10 raided then ours.

11 A Yes.

12 Q Who is T?

13 A Teng.

14 Q And T-E-N-G, right?

15 A Yes.

16 Q And Teng would be Phong's younger brother?

17 A Yes.

18 Q Chong responds back, is that right.

19 A Yes.

20 Q And you say yes, correct --

21 A Yes.

22 Q -- according to the transcript?

23 And then Chong says, can you call T to see if he  
24 picks up his phone because I want to talk to him. Is  
25 that correct?

1     A     Yes.

2     Q     Mr. Lee, I want to show you exhibit stickers No. 44;  
3           is that correct?

4     A     Yes.

5     Q     Okay. Exhibit 44 is two pages in length, correct?

6     A     Yes.

7     Q     If you need a little time to review it. Do you  
8           recognize what Exhibit 44 is?

9     A     No, but yes.

10    Q     Does it look like the letter?

11    A     The letter, yes.

12    Q     So you received a letter from Chong but you ripped it  
13          up at some point?

14    A     Yeah, because I didn't really care to read it.

15    Q     Okay. And the title on this page was written to Pao,  
16          P-A-O, which is your name in Hmong, correct, Mr.  
17          Lee?

18    A     Yes.

19    Q     And the letter reads: I ain't even mad at you, 'lil  
20          bro, is that correct, the first sentence?

21    A     Yes.

22    Q     And then it says: Don't worry about nothing. Is  
23          that correct?

24    A     Yes.

25    Q     I'll be all good in the end. Is that correct?

1 A Yes.

2 Q You live to die anyways. Is that correct?

3 A Yes.

4 Q It's what you do in the end that's what counts.

5 A Yes.

6 Q And this would have been a -- a letter -- where was

7 Paul -- where was Chong when he sent this letter?

8 A I don't know.

9 Q It came to your house?

10 A To my sister's apartment.

11 Q Okay. But that's where you were living at the

12 time?

13 A Yes.

14 ATTORNEY VISHNY: Okay. I'd like to

15 approach.

16 (Bench conference.)

17 Q (BY ATTORNEY SCHNEIDER) The letter then reads: Also

18 remember what you told me when Mao and Steph and them

19 arguing. Is that correct?

20 A Yes.

21 Q You said, if you don't got family back, then don't

22 even consider us family. Do you recall that?

23 A Yes.

24 Q And he writes: Well I had your back. Is that

25 correct?



1 A Yes.

2 Q He writes: I wouldn't let no one touch you.

3 A Yes.

4 Q Letter continues: But remember your words. You  
5 didn't have my back, 'lil bro. Is that what's  
6 there?

7 A Yes.

8 Q And that's the only thing that you failed me.

9 A Yes.

10 Q Did he -- that Christmas, did he send you or leave a  
11 Christmas gift at all do you remember?

12 A Yes.

13 Q What was that?

14 A A keyboard.

15 Q And the letter signed, love you, Coob; is that  
16 correct?

17 A What?

18 Q Love you or love 'ya, Coob, is how the letter is  
19 signed?

20 A Yeah, I guess.

21 Q And is -- do you know that this was a letter you  
22 received from Chong?

23 A Yeah.

24 ATTORNEY SCHNEIDER: You can turn the  
25 lights back on, Judge.

1 Q (BY ATTORNEY SCHNEIDER) You remember talking to the  
2 officers?

3 A Yes.

4 Q But you don't remember -- do you remember telling  
5 them on more than one date Chong told you he shot the  
6 guy?

7 A Like I said, I don't remember much.

8 Q Okay.

9 ATTORNEY SCHNEIDER: I don't have any other  
10 questions.

11 THE COURT: Okay. And let me ask, Attorney  
12 Vishny, before you begin, would it -- would it be  
13 appropriate to have a five- or ten-minute break for  
14 the jury?

15 ATTORNEY VISHNY: Yes.

16 THE COURT: Okay. Why don't we give you a  
17 ten-minute afternoon break, and then, again,  
18 hopefully you know this by now, bring in water if you  
19 would like or if there is other drinks that you have  
20 in there.

21 Please remain standing while the jury is  
22 excused.

23 (The jury was escorted out of the  
24 courtroom.)

25 THE COURT: Okay. Gallery may be seated.

1           We did have -- likewise, Mr. Lee, you can sit if  
2           you want. We did have a sidebar after Mr. Lee's  
3           invocation of the fifth amendment. After that  
4           Attorney Groh did have an opportunity to speak with  
5           his client. Subsequent to that Mr. Lee did agree  
6           that he would be testifying.

7           Attorney Schneider, there was a -- I don't know  
8           if it was a sidebar, but argumentative question. The  
9           court did sustain that objection and strike it.

10          Then there was a sidebar related to the final  
11          letter. Objection to foundation. Overruled. But  
12          for record preservation, it is dually noted for the  
13          record.

14          Anything else? I believe that addresses the  
15          sidebars we had during this session.

16                 ATTORNEY VISHNY: That's correct.

17                 THE COURT: Okay. Did counsel have a  
18          question for me?

19                 ATTORNEY SCHNEIDER: Just for scheduling.  
20          We do have -- after we finish with the cross of Mr.  
21          Lee, we do have two people from the lab we would like  
22          to do tonight. Each of them will be short. I  
23          understand it's going to push us past five, but  
24          they're from Madison and I don't know if they've held  
25          other dates for us.

1                   THE COURT: Okay. I was guessing, and I  
2                   could be wrong, I was thinking you'd be a couple  
3                   hours.

4                   ATTORNEY VISHNY: I don't know how long  
5                   it's going to take, but I don't understand why the  
6                   State didn't put on two short witnesses before this,  
7                   and, you know, I don't know what time I'm going to  
8                   finish. I might finish at five, and if it's between  
9                   five and 5:30 fine, but if it's after six, I don't  
10                  really foresee --

11                  THE COURT: I'll have to see where it goes,  
12                  I guess, Attorney Schneider. If we get them in,  
13                  great, but if we get to 6:00, that's already keeping  
14                  the jury here quite long, and so we'll do everything  
15                  we can to make it, but likewise, Attorney Vishny, you  
16                  conduct your cross as you see fit.

17                  ATTORNEY VISHNY: Thank you.

18                  THE COURT: That's not meant to be a  
19                  pressure.

20                  ATTORNEY VISHNY: Thank you. I want to ask  
21                  one other thing as long as we're here rather than  
22                  interrupt. I don't think the witness should be here,  
23                  though, or I think we should approach the bench.

24                  THE COURT: Why don't we do this. Why  
25                  don't we excuse the witness then if he needs a

1           restroom break. I know he --

2                               (Bench conference.)

3                   ATTORNEY SCHNEIDER: The parties have  
4           stipulated that the preliminary hearing in this case  
5           was February 12th, 2014, if that's --

6                   THE COURT: Let's just enter it as a  
7           stipulation. I think that's the easiest.

8                   ATTORNEY VISHNY: That's fine. I don't  
9           care how we do it, but I'm going to then make mention  
10          of it with him.

11                  THE COURT: That's fine. Why don't --  
12          before you start questioning, just enter it as a  
13          stipulation.

14                  ATTORNEY VISHNY: Okay. I'm doing it  
15          because I'm just assuming he's going to say I don't  
16          know and I don't remember based on what we've seen.

17                  ATTORNEY SCHNEIDER: Do we want to,  
18          preplanning, because not knowing when you'll be  
19          finished, we need -- there will be phone calls  
20          tomorrow, we'll need to meet like we did, but I don't  
21          know that it will take us so -- you were almost done  
22          by 9:15. If we eliminated the excessive chatter, I  
23          think a half hour is all we probably need. Tell them  
24          at nine. If we get through some of them we could  
25          always do some during the lunch hour too.

1                   THE COURT: Let's -- I mean at the latest  
2                   let's start at 9:15, that way if it starts us 15  
3                   minutes earlier then we have a little extra time if  
4                   we need it.

5                   ATTORNEY SCHNEIDER: Okay. All right.

6                   (Court in recess.)

7                   ATTORNEY SCHNEIDER: Can we ask something  
8                   real quick? And she would have done it regardless  
9                   who it was. There are times when there is no more  
10                  room and people have been trying to come in in back  
11                  of the courtroom and there is no more standing room  
12                  so Stephanie told, and I think it was LaKeisha, there  
13                  is no room, I don't know where to put you, can't  
14                  crawl across the row of people to get to the open  
15                  side, and I think you found out or might have been  
16                  upset.

17                  ATTORNEY VISHNY: I hope she doesn't feel  
18                  like I was rude to her. I told her I knew she was  
19                  just doing her job, but I didn't think she really had  
20                  the right to say that to people, and if this is a  
21                  problem it should be brought to the court's  
22                  attention.

23                  THE COURT: What I'll probably I'll do is  
24                  just try to slide people down.

25                  ATTORNEY SCHNEIDER: Usually there is no

1 room to do that.

2 THE COURT: If there's no room, just let me  
3 do it, that way I can be --

4 ATTORNEY SCHNEIDER: All right. Then I'll  
5 tell her to approach me if that happens.

6 THE COURT: Yes. That's fine. And again,  
7 it's not -- I'm not upset, it's just it's easier if I  
8 just do it for -- that's fine.

9 (Court in recess.)

10 (The jury was escorted into the courtroom.)

11 THE COURT: All right. Please be seated.

12 We -- what I'm going to do is I'm going to,  
13 because I'd still like to have you be able to get out  
14 this evening at a reasonable hour, we're going do it  
15 a little bit out of order. We have some witnesses  
16 that are going to testify this evening and then we'll  
17 have Mr. Lee come back for his cross-examination  
18 tomorrow morning. And again, it's not a logical  
19 break, but I wanted to allow for you to again get  
20 home at a reasonable time.

21 So, Mr. Maier, do you have your witness, sir?

22 ATTORNEY MAIER: I do. Your Honor, the  
23 State calls Kyle Anderson.

24 THE COURT: If you would please remain  
25 standing at the witness stand, we'll --

1 (Oath administered to witness.)

2 THE WITNESS: I do.

3 THE CLERK: Please state your full name and  
4 spell it for the record please.

5 THE WITNESS: Kyle Anderson. K-Y-L-E,  
6 A-N-D-E-R-S-O-N.

7 THE COURT: Mr. Maier, your witness.

8 ATTORNEY MAIER: Thank you, Your Honor.

9 **EXAMINATION OF KYLE ANDERSON**

10 **BY ATTORNEY MAIER:**

11 Q Mr. Anderson, how are you employed?

12 A I am the supervisor at the State Crime Laboratory in  
13 Milwaukee and I'm also a forensic firearms  
14 examiner.

15 Q How long have you worked as a forensic firearms  
16 examiner?

17 A Since 2003.

18 Q Mr. Anderson, if you could, could you just test that  
19 to make sure it's on?

20 A Test.

21 Q Thank you. And I missed the end of that answer.

22 A Since 2003, June of 2003.

23 Q Can you tell the jury what your relevant educational  
24 background is as far as becoming a firearms  
25 examiner?



1     A     I have a Bachelor's in Science from University of  
2           Wisconsin Platteville, 22 years in the military.  
3           Seven of that I was a company armorer. I've attended  
4           numerous civilian armory schools and military armory  
5           schools, certified in several different manufacturers  
6           as far as weapons maintenance. In addition, I  
7           completed approximately a two-and-a-half year  
8           apprenticeship type training program at the State  
9           Crime Lab in Milwaukee.

10    Q     Are you able to estimate the number of firearms that  
11           you've examined in your professional duties since  
12           2003?

13    A     Thousands. I couldn't put a number on it.

14    Q     Okay. And you said that you have -- you worked in  
15           the military as an armorer and then also taking  
16           courses put on by firearms manufacturers to become a  
17           certified armorer with that particular company,  
18           correct?

19    A     Yes, that's correct.

20    Q     Can you describe what -- what sort of activities you  
21           would perform, you know, related to those  
22           manufacturers but then also in the military?

23    A     Basically, whether civilian or military, an armorer  
24           is responsible for maintaining all the weapons in a  
25           company. In the military it's in a company. If

1           you're a civilian and you're certified, you can  
2           basically repair any weapon that anybody brings to  
3           you. So the armorer schools teach you how the  
4           firearms work, how it functions, what the parts are,  
5           how to diagnose it if something is damaged and then  
6           how to repair it.

7       Q     So this goes way beyond like something like breaking  
8           a weapon down for cleaning and ordinary maintenance  
9           an end user might have, correct?

10      A     That's correct.

11      Q     You're able to do the things that the instruction  
12           manual says not to do?

13      A     Yes, that's correct.

14      Q     Can you explain the sort of activity that you would  
15           perform in determining the identifying  
16           characteristics of a particular bullet, a fired  
17           bullet, I should say?

18      A     How we do an examination on a fired bullet?

19      Q     Yes.

20      A     When we receive a fired bullet in the crime  
21           laboratory, the first thing we're going to do is  
22           we're going to determine the class characteristics of  
23           that bullet.

24                   THE WITNESS: Your Honor, I have some --  
25           some large plastic demonstration models that might

1 help the jury understand a little bit.

2 THE COURT: Okay.

3 A So what I'm holding up here is just basically a very  
4 large bullet and a large plastic cut away of a barrel  
5 really. So the first thing we look for is caliber of  
6 bullet. Caliber, for all intents and purposes, is  
7 just the size of the bullet. That's the easiest way  
8 to explain it. And then the other class  
9 characteristic we look for are the number of lands  
10 and grooves present on that fired bullet. So  
11 firearms manufacturers, depending on the  
12 manufacturer, the majority of them make their barrels  
13 with what we call lands and grooves, so the raised  
14 portion of this model would be the land impression,  
15 and the recessed would be the groove. These are  
16 usually made at some sort of an angle, either right  
17 or left. As you look at this, it goes off to the  
18 left. What that does is it imparts the spin on the  
19 bullet when the bullet is traveling so it gives it  
20 stability similar to a football thrown by a  
21 quarterback. If it's not spinning, it doesn't fly  
22 straight. So the class characteristics of each  
23 barrel -- barrel are specific to a manufacturer. So  
24 if we just have a bullet, really the only thing I can  
25 tell you is the caliber and the number of lands and

1 grooves of the barrel that it was fired through.

2 Q That narrows it down in a, I'll say, universal sense  
3 but not necessarily a very specific sense; is that  
4 correct?

5 A That's correct. If -- let's just say for example  
6 this was a nine-millimeter and it was fired through a  
7 Glock firearm barrel, that was six right, it would  
8 narrow it down to every 9mm Glock on the planet. So  
9 it can specifically narrow it down to a manufacturer  
10 maybe but still there is an awful lot of those on the  
11 planet.

12 Q Okay. Did you perform an analysis of a fired bullet  
13 sent to you from the Appleton Police Department and  
14 related to a homicide case involving a victim named  
15 Joshua Richards?

16 A Do you have a lab case number?

17 Q It is M15-37?

18 A Yes, I did.

19 Q When you -- and you received that fired bullet from  
20 the Appleton Police Department?

21 A That's correct.

22 Q When you received the bullet, what did you do?

23 A The first thing I do when I receive any evidence into  
24 the laboratory is we mark the packaging. So the  
25 packaging would be marked with date, initials, case

1           number and item designation letter are typically the  
2           marks that get put on there. Then when the bullet or  
3           the piece of evidence is open from the packaging,  
4           that evidence itself is also marked.

5       Q     I'm sorry. I may have missed this. Were you able to  
6           determine the caliber of that bullet?

7       A     Yes, I was.

8       Q     And what was that?

9       A     .25 auto.

10      Q     What about the specific other class characteristics,  
11           the lands and grooves? What sort of barrel did that  
12           bullet come from?

13      A     It was fired through a 6/right conventional barrel.

14      Q     Now, I'm going to ask you a question, and I don't  
15           know if you know the answer, but with .25 autos, is  
16           there a typical size associated with that type of  
17           firearm specific to a handgun?

18      A     I'm not sure I understand the question.

19      Q     Okay. Are there full frame .25 auto handguns out  
20           there?

21      A     I don't know for sure. There could be though.

22      Q     Have you ever seen one?

23      A     No.

24      Q     The .25 auto handguns that you've seen throughout  
25           your career, would you characterize them as typically

1 large weapons or compact weapons?

2 A No, they're typically compact, smaller framed  
3 weapons.

4 Q In fact, compact enough they might even be --

5 ATTORNEY VISHNY: Objection. Leading.

6 Q (BY ATTORNEY MAIER) How big could they be, how small  
7 could they be?

8 A Smaller than your hand.

9 Q Okay. Were you able -- and this is what -- all that  
10 you were asked to do is determine essentially caliber  
11 and the -- determine the number of lands and grooves  
12 from this bullet, correct?

13 A Yes, that's correct.

14 ATTORNEY MAIER: Could I have just one  
15 moment please?

16 THE COURT: Not a problem, sir.

17 ATTORNEY MAIER: I guess just one more  
18 question and that's --

19 Q (BY ATTORNEY MAIER) All right. Mr. Anderson, when  
20 you were done examining that bullet, what would you  
21 have done with it?

22 A Would have repackaged it in State Crime Laboratory  
23 plastic packaging.

24 Q And then done what?

25 A And then it goes back to our -- well, then it would

1           have been our vault. Now we move evidence to  
2           somewhere else. It would have been in our vault --  
3           stored in our vault until the agency came and picked  
4           it up.

5       Q     And in this case did the Appleton Police Department  
6           then come pick the bullet back up?

7       A     Yes.

8                       ATTORNEY MAIER: That's all the questions I  
9           have for this witness. Thank you.

10                    THE COURT: Any cross-examination?

11                    ATTORNEY VISHNY: Yeah. Just real briefly.

12                    **EXAMINATION OF KYLE ANDERSON**

13       **BY ATTORNEY VISHNY:**

14       Q     So you took a look at a bullet and you -- and that's  
15           it, right?

16       A     Essentially, yes.

17       Q     Right. And you said it's a .25 caliber and you  
18           didn't examine any other evidence, correct?

19       A     That is correct.

20       Q     And the bullet you looked at was fired, had been  
21           fired, right?

22       A     That's correct, it was fired.

23       Q     And it was deformed, is that --

24       A     It was in relatively good shape, yes.

25       Q     But it's not the same as a bullet that's been

1           unfired, I mean there is some -- but it wasn't -- let  
2           me -- let me rephrase that. It had some slight  
3           deformity to it, right?

4       A     Well, a fired bullet will show those land and groove  
5           impressions that I talked about whereas an unfired  
6           would not.

7       Q     Right. So it wasn't like sometimes when a bullet has  
8           been fired and it has landed against an object it can  
9           be so deformed or split into different pieces, that  
10          wasn't the situation here?

11      A     That's correct.

12      Q     It was pretty easy for you to tell what it is?

13      A     Yes.

14      Q     And so you looked at the one bullet, determined it  
15          was a .25, and that was it, that was the extent of  
16          your work in this case?

17      A     Yes, that's correct.

18                   ATTORNEY VISHNY: Nothing further.

19                   THE COURT: Redirect?

20                   ATTORNEY MAIER: None. Thank you.

21                   THE COURT: Ladies and gentlemen of the  
22          jury, any questions to submit for this witness?

23                   (No response.)

24                   THE COURT: Very good. Thank you, sir.

25                   THE WITNESS: Thank you.



1 THE COURT: You are excused.

2 ATTORNEY MAIER: Your Honor, the next  
3 State's witness is Samantha Delfosse.

4 THE COURT: If you would please come to the  
5 witness stand, remain standing and the clerk will  
6 swear you in.

7 THE CLERK: Please raise your right hand.  
8 (Oath administered to witness.)

9 THE WITNESS: I do.

10 THE CLERK: Please state your full name and  
11 spell it for the record please.

12 THE WITNESS: Samantha Delfosse.

13 S-A-M-A-N-T-H-A, D-E-L-F-O-S-S-E.

14 THE COURT: You may be seated. Mr. Maier,  
15 your witness, sir.

16 ATTORNEY MAIER: Thank you.

17 **EXAMINATION OF SAMANTHA DELFOSSE**

18 **BY ATTORNEY MAIER:**

19 Q Miss Delfosse, how are you employed?

20 A I am a DNA analyst at the State Crime Lab in  
21 Madison.

22 Q How long have you worked there?

23 A I have been there since June of 2007.

24 Q Can you tell the jury a little bit about your  
25 educational and professional training background?

1     A     Sure. I have a Bachelor of Science degree with  
2           molecular biology from the University of Wisconsin in  
3           Madison. As it applies to forensics specifically, I  
4           did partake in a ten-month extensive training course  
5           where we did multiple mock samples for casework  
6           analysis, including any kind of statistics or  
7           screening tests and actually DNA profiling as well.

8     Q     Did you work in any forensic capacity prior to  
9           becoming employed in the DNA analysis unit of the  
10          Wisconsin State Crime Lab?

11    A     In a forensic capacity, no.

12    Q     There may have been some internships or something  
13          like that as you were going through educational  
14          training?

15    A     Prior to my job with the lab, I was actually a  
16          research specialist at the University of Wisconsin in  
17          Madison and then actually did my training for  
18          forensic analysis while I was employed with the  
19          lab.

20    Q     Thank you. When -- in the course of investigation,  
21          I'll just say criminal investigations, either pre- or  
22          post-charge, you receive items from law enforcement  
23          agencies for analysis, correct?

24    A     Correct.

25    Q     They seek, I guess, analysis but then also some

1 information from you about what types of biological  
2 and trace evidence might be found on a particular  
3 item, correct?

4 A Correct.

5 Q Do you always find things?

6 A No, we do not.

7 Q Why is that?

8 A There could be multiple different variables. One  
9 could be what kind of environment a certain item was  
10 in. If it was exposed to high heat, for example, it  
11 may be very possible that any kind of touch DNA might  
12 be destroyed. If something -- for example, in a  
13 sexual assault, you take a shower, it's very possible  
14 that you are going to wash away any potential  
15 biological or DNA evidence.

16 Q So it's not quite like people might think based on TV  
17 shows like CSI, correct?

18 A No, it is not.

19 Q Can you describe, excuse me, what the process is --  
20 I'll just give you as an example an item of clothing,  
21 a vest like you might wear outside a sweatshirt or  
22 something like that. What would you do in performing  
23 your professional duties in looking for biological or  
24 trace evidence on that vest?

25 A When we are examining items, particularly clothing,

1           what we will do is once we've taken custody of the  
2           item, we will visually examine them. So we will  
3           literally turn on our extra light sources at our  
4           benches and go over every surface of that clothing  
5           with just visual observations. Anything that  
6           resembles a possible biological, we'll make note of.  
7           Once we finish the screening, that's when we will  
8           actually look at presumptive or indicative tests for  
9           the different biological fluids.

10       Q     And if you find nothing?

11       A     If there was nothing present, it's usually no further  
12           analysis scenario.

13       Q     Okay. Are there items -- again, using first a vest,  
14           are there items that in your experience you might be  
15           -- one might be more likely to find something like  
16           DNA evidence than in other parts of that item?

17       A     Certain areas of clothing will usually have a higher  
18           chance or a higher probability of DNA. For example,  
19           if you're wearing an undershirt, I'm more likely to  
20           find the DNA around the interior neck than I am on  
21           the outside front.

22       Q     So you look at inside and outside of a clothing  
23           item?

24       A     Correct.

25       Q     What about hats?

1     A     Primarily would be the same situation where we would  
2           examine the entire surface, and if there was any  
3           potential DNA on there, for example, the wearer, we  
4           would swab the inner brim or the inner rim of the  
5           hat.

6     Q     Excuse me. Have you examined fired shell casings for  
7           DNA?

8     A     Several years ago, yes, I did.

9     Q     What are some of the obstacles that you find in  
10          examining a shell casing from a bullet that's been  
11          fired when looking for DNA?

12    A     The biggest obstacle with a fired case is that it was  
13          exposed to extreme heat. This heat will utterly  
14          destroy any cellular material or any DNA that is on  
15          the surface. In addition, they're usually smooth.  
16          There is nothing for your cells to actually adhere or  
17          get stuck into.

18    Q     So you say it would be difficult if not -- I'm sorry,  
19          rare if not almost impossible to find something --  
20          DNA from touch on something like that, a fired shell  
21          casing?

22    A     Correct. In my experience I have not had success  
23          with it.

24    Q     In the early part of or late part of 2014, early part  
25          of 2015, were you the analyst for a number of items

1 submitted, Case M15-37, by the Appleton Police  
2 Department for DNA analysis?

3 A Yes, I was.

4 Q Do you have your report handy?

5 A Yes, I do.

6 Q Okay. Appleton police sent a vest, a black  
7 sweatshirt, a Miami Heat logoed baseball cap -- I'll  
8 wait for you to catch up. Sorry.

9 A It's all okay.

10 Q A Milwaukee Brewers baseball cap, a baseball cap with  
11 I'm assuming a White Sox logo, it just says Sox, a  
12 jacket, two shoes and a coat; is that correct?

13 A Correct.

14 Q Can you tell the jury what you did with each of those  
15 items?

16 A With each of these items I actually did the visual  
17 examination, so I looked over the entire surface both  
18 inside and outside. If there was anything that could  
19 possibly be biological, I made note of it and I did  
20 do a presumptive test.

21 Q Did you find anything when you examined those items,  
22 which are labeled Items A through I, where the shoes  
23 are H1 and H2, to indicate the presence of blood on  
24 any of the items?

25 A All of my indicative tests came back as no potential

1 blood.

2 Q Did you find any other indications that there may be  
3 biological or other trace evidence located on any of  
4 those items submitted by the police department?

5 A No, I did not.

6 Q And so this was a situation like we mentioned in what  
7 amounts to a hypothetical about the other vest, this  
8 is a -- what you referred to as a no further analysis  
9 situation?

10 A Correct.

11 Q And what does that mean?

12 A Primarily if we do not locate any biological fluids  
13 or any potential DNA source, we will actually stop  
14 analysis with the DNA section.

15 Q And when that happens, what do you do?

16 A Once that is finished, we will actually reseal any  
17 evidence and either give it to another discipline, if  
18 they're also to look at it, or we return it to the  
19 agency.

20 Q So it might be something that gets sent on to maybe  
21 the firearms examiners like Mr. Anderson, correct?

22 A Correct.

23 Q But he wouldn't be looking at a baseball cap?

24 A No.

25 Q So in this case what did you do?

1     A     With these items, basically, they were repackaged and  
2           they were returned to the agency.

3     Q     Okay. I just have a couple more questions for you. I  
4           want to ask you a little bit more about touch DNA and  
5           how difficult it is to obtain.

6                 One of the things that you talked about, and you  
7           talked about it in general first but then also  
8           specifically to a fired shell casing, is heat. What  
9           are some of the other environmental factors that can  
10          make it difficult to or impossible to retrieve  
11          biological material from an item?

12    A     The two biggest factors are going to be heat and also  
13          any type of water would be very inhibiting. If it's  
14          exposed to any other elements such as cold  
15          temperatures, a lot of times if it gets frozen and  
16          thaws, frozen and thaws, it will break down any kind  
17          of cellular material that's there.

18    Q     So that's -- the cell's literally bursting open and  
19          sort of dissolving right there on the surface of  
20          whatever they may be on, correct?

21    A     Correct.

22    Q     Because of this, and I suppose partly in response to  
23          shows like CSI and those sorts of things, the State  
24          Crime Lab has a set of protocols, or I'll say rules,  
25          I guess, for the submission of items for DNA



1 analysis; is that correct?

2 A Correct. We do have some guidelines that we request  
3 agencies to consider.

4 Q And agencies are free to contact the State Crime Lab  
5 to seek an exception or at least an explanation of  
6 what a particular item -- whether a particular item  
7 might meet or not meet the analysis standard; is that  
8 correct?

9 A That's correct. Absolutely.

10 Q Have you responded to requests for that or is that  
11 something that someone farther up the chain does?

12 A I am not the primary contact, but I have been  
13 contacted by agencies that I'm already working some  
14 of their cases.

15 Q Okay. Or maybe something like you come and testify  
16 in court on a case in Outagamie County so people  
17 think they can call you all the time now?

18 A Correct. Actually, it has happened.

19 Q Okay. Something that's been sitting in a toilet tank  
20 for four days, is that likely to meet the threshold  
21 for DNA analysis by the lab given those guidelines?

22 A In my opinion, no, that would not be accepted.

23 Q And similarly within the p-trap of a toilet, so under  
24 the water line, pre-sewer system, I guess, but  
25 exposed to water for that period of time, same

1 problems with water causing cell breakdown?

2 A Correct.

3 ATTORNEY MAIER: Thank you, Miss Delfosse.

4 That's all the questions I have, Your Honor.

5 THE COURT: Any cross-examination?

6 ATTORNEY VISHNY: Yeah.

7 **EXAMINATION OF SAMANTHA DELFOSSE**

8 **BY ATTORNEY VISHNY:**

9 Q So the bottom line here is you looked at a bunch of  
10 items and you didn't find any blood on any of them,  
11 right?

12 A Correct.

13 Q And one of the items that you looked at that there  
14 were a bunch of articles of clothing, correct?

15 A Yes, there was.

16 Q And there were a couple of jackets you looked at,  
17 right?

18 A Correct.

19 Q And I'm showing you what was previously marked as  
20 Exhibit 103, this black jacket, that was something  
21 you didn't find any blood on -- black or gray jacket  
22 rather. Do you need to look at it up close?

23 A If I could please.

24 Q Of course.

25 A Correct. Yes.

1 Q Okay. Now, as far as examining for touch DNA, I mean  
2 basically what you're saying is the crime lab can  
3 look at things like cartridge casings but it's not  
4 very fruitful because you've gotten negative results  
5 for so many times, right?

6 A Correct.

7 Q So an agency has to do -- request that specially,  
8 right?

9 A Correct.

10 Q And that does happen sometimes from time to time,  
11 notwithstanding the fact that getting results is very  
12 unlikely.

13 A It does happen from time to time, yes.

14 Q And when an agency does ask for that, then the lab go  
15 ahead -- does go ahead and test as requested,  
16 correct?

17 A Correct.

18 Q And it would be more likely to happen in a very  
19 serious case like a homicide than a -- just a  
20 shooting where nobody -- the bullet didn't hit  
21 anybody or, you know, nobody died, right?

22 A Potentially, yes.

23 Q Okay. Now, as far as items sitting in water,  
24 there's -- or submerged in water, you said it's very  
25 unlikely to get DNA evidence when an item has been

1 submerged in water for several days, correct?

2 A Primarily, yes, when there is a smooth item,  
3 correct.

4 Q Yes. And what about when it's been submerged in  
5 water for one day, do you have a better chance of  
6 getting DNA from it then or is it pretty much the  
7 same as four days?

8 A Pretty much the same.

9 Q What if an item is floating on top of water and not  
10 submerged so that part of it is untouched by water,  
11 you know, sometimes objects float, there's water on  
12 the bottom and no water on the top, right?

13 A Correct.

14 Q All right. What if that happens, is it worth trying  
15 to look for DNA under those circumstances or is that  
16 the same as a submerged object?

17 A Unless the item was completely prohibited from  
18 turning or rotating at all, it would be pretty much  
19 the same results.

20 Q Okay. So you don't really know because if something  
21 is sitting in a toilet for a day, you don't know if  
22 it's rotated or been exposed to water on all sides or  
23 not?

24 A No, I do not.

25 ATTORNEY VISHNY: Nothing further.

1 THE COURT: Any redirect?

2 ATTORNEY MAIER: No, Your Honor. Thank  
3 you.

4 THE COURT: And do any members of the jury  
5 have a question for consideration?

6 (No response.)

7 THE COURT: Thank you very much. You may  
8 be excused.

9 ATTORNEY SCHNEIDER: We would then propose  
10 breaking for the day.

11 THE COURT: Very good.

12 Ladies and gentlemen, we have concluded the  
13 evidentiary portion of the proceedings today. I  
14 would ask that you be here and ready to go by 9:15  
15 tomorrow.

16 Wendy, if you could please escort our jury out  
17 please.

18 (The jury was escorted out of the  
19 courtroom.)

20 THE COURT: Anything else we need to  
21 address from the State's perspective?

22 ATTORNEY SCHNEIDER: No. Could we plan to  
23 meet again at 8:30 so we can go through any calls,  
24 letters?

25 THE COURT: That was my -- my plan, so

1           that's absolutely fine.

2           Attorney Vishny, anything else for today?

3           ATTORNEY VISHNY: 8:30 a.m.?

4           THE COURT: 8:30.

5           ATTORNEY VISHNY: I will be here.

6           THE COURT: Very good. We are adjourned.

7           (Proceedings concluded.)

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## C E R T I F I C A T E

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5     STATE OF WISCONSIN     )  
6     COUNTY OF OUTAGAMIE     ) ss.:

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9             I, JOAN BIESE, RMR/CRR, do hereby certify that I  
10     am the official court reporter for Branch IV of the  
11     Circuit Court of Outagamie County;

12             That as such court reporter, I made full and  
13     correct stenographic notes of the foregoing proceedings;

14             That the same was later reduced to typewritten  
15     form;

16             And that the foregoing proceedings is a full and  
17     correct transcript of my stenographic notes so taken.

15

18             Dated this 2nd day of August, 2016.

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JOAN BIESE, RMR/CRR

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